THE GREAT MURDER TRIAL OF
LINDSEY GIBSON
IN WESTERN ARKANSAS,
AND
HISTORY OF HIS EVENTFUL LIFE
SAVED FROM AN UNJUST
AND
IGNOMINOUS DEATH
BY THE
G.A.R. AND W.R.C.

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Preface

When I began the task of preparing this book I was torn between a simple reprint and a book filled with research notes. As I delved deeper into the people and events involved in the trial I came to realize that this event involved more than just “Old Saint Paul”. The proverbial blind men and the elephant applied. The events recorded in the book cannot so easily be presented with out distorting the facts. The reader is encouraged to research the people and their place in history in northwest Arkansas. For example Col. A.S. Fowler was appointed sheriff in Pope County, Arkansas to establish law and order in the post civil war county. Therein lies a story worthy of a volume itself. Thomas B Edmonds who was the hanged man mentioned is also a interesting research topic.

I have spent numerous hours and miles collecting the information in the book. The University of Arkansas had recorded the book on microfilm and this provided much of the text. There were however gaps and omissions in the text that had to be filled in. A copy at the University of Oklahoma was the book from which the front cover and the author's name came from. I have tried to make this as true to the original text as possible only correcting obvious name spellings and typos that interfered with the text.

I would like to think Mrs Joy Russell and the Madison County Historical Society. I would also like to thank Lindsey Gibson's family descendant Cheryl Davis who provided the photo of Lindsey Gibson from an original copy of this book.

I hope my efforts will help preserve this history of Madison County, Arkansas

I dedicate this book to my wife Jackie who supports me in any project

Scott Hensley

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PREFACE

By way of preface to this history of the Lindsey Gibson murder trial, we will state that this trial was one of unusual interest, first on account of its being for an alleged murder charged to have been committed twenty-four years ago, shortly after the great War of Rebellion; secondly, on account of the defendant, Lindsey Gibson, being an ex-Union soldier and a member in good standing of the Grand Army of the Republic. The case gained national notoriety by reason of the fact that the various posts of that organization raised a defense fund for the purpose of employing council to defend the accused.

As this defense fund was raised by small contributions coming from the G.A.R. Posts throughout the United States and by a handsome contribution from the Women's Relief Corps as an organization, the letters of inquiry concerning the final result and details of this important trial are numerous, in fact, too numerous to attempt to answer.

It is, therefore, the object of the author, in the publication of this book, to give a truthful and unvarnished history of this remarkable and sensational trial, without adding to or keeping back from the truth in any respect.

It is quite natural that those who have contributed to this defense fund should know should like to know how it has been used, and to know whether their contributions have been given worthily and to whom expended, and for what purposes expended.

Those who have thus generously given their money in

behalf of this stranger to them, have cause to feel that his cause is their cause, and to want to know, and have a right to know, how he has fared in his great criminal trial in Western Arkansas.

All this information the author attempts to give with truth, impartiality and fairness, and leaves the reader to draw his own conclusion, after reading the evidence in the case, the instruction of court, and the arguments of able counsel on both sides, whether or not the defendant was guilty of murder as charged.

Chapter I.

EARLY HISTORY OF LINDSEY GIBSON. HE JOINS THE UNION ARMY

LINDSEY GIBSON was born in Perry County, Kentucky, on the 23rd of April 1838, and moved to Madison County, Ark., with his parents, in 1851, where they lived up to the breaking out of the war between the North and the South. Madison County is one of the northwestern counties of the State of Arkansas, lying largely upon the Boston or Ozark Mountain, and its foot-hills, and is near the Missouri line. This mountain country of Arkansas, like the mountain portions of Tennessee and West Virginia, had many loyal or Union citizens, who were opposed to secession, - who were opposed to giving up the old flag for new and untried stars and bars.

These hardy mountaineers knew nothing but freedom and love for the flag of their revolutionary forefathers, - the grand old stars and stripes.

They loved the Union as a child loves its mother; and when the State of Arkansas, as a state, seceded, and went out of the Union, these loyal men of the mountains kissed their loved ones good-by, bade adieu to their hearthstones (many of them forever), fled to the State of Missouri, and there organized themselves into Federal regiments to fight for the suppression of the Rebellion and the restoration of the Union.

Among those loyal patriotic men, who thus left their homes and all they held dear, to fight for the Union, their country and flag, was the subject of this book, then a youthful and handsome Lindsey Gibson; while his brother – older than himself – and also his brother-in-law, and many of his best friends, donned the confederate gray and enlisted in the rebel army. And perhaps it would not be out of order to state here that this elder brother of Lindsey Gibson was afterward killed in battle fighting in the rebel army. Those were dark and cruel days for Western Arkansas. It was brother against brother, and father against son, and in the Gibson family it was brother against brother.

But as before stated , young Lindsey Gibson went to the Union lines and at once enlisted in Company G of the First Regiment Arkansas Infantry Volunteers. He served as a brave and gallant soldier to the close of the war, and engaged in several battles hardest-fought battles west of the Mississippi River.

At the time Lindsey Gibson went into the army he was one of the strongest young men in the State of Arkansas; but he came out with permanently impaired health.

Chapter II

GIBSON KILLS WILLIAM PRATER

After the close of the was, Lindsey Gibson, notwithstanding his impaired health, again settled in Madison County, and engaged in farming on a small scale till he got into the unfortunate trouble with William Prater, in which he was forced to save his own life. After the disbandment of the army, the mountain fastnesses became infested with horse thieves and Gibson made himself active in connection with the other good citizens, in hunting and driving them out of the country.

In the month of March, 1867, Lindsey Gibson and a number of other good men started in pursuit of a gang of these outlaws, and pursued them to Montgomery County, Ark., where a fight ensued between the two parties, and one on each side was killed, and several of the Gibson party wounded. Among this band of outlaws was Sonny Tucker, who made his escape from the Gibson party, and who had relatives living in Madison County, near old St. Paul, a village near which Lindsey Gibson also lived.

The Gibson party returned to Madison County on the last day of March and on the following morning Lindsey Gibson went into the old village of St. Paul to get some meal and there met Dock Tucker and William Prater.

Two relatives of Sonny Tucker, two relatives of the notorious outlaw Sonny Tucker, whom Gibson and his party had been following. Shortly after the three met, a difficulty ensued, in which William Prater lost his life. The writer will not attempt to state the circumstances connected with this difficulty, in which William Prater was killed, as evidence was conflicting in the extreme.

So much was the evidence conflicting that one hearing the testimony, on the side of the prosecution alone, would consider is a case of red-handed murder in the first degree. But to afterward hear the testimony on the part of the defense believe the defendant was wholly justified, under the law, in the killing of William Prater, and that the persecution was the result of prejudice and persecution.

As before stated, the writer cannot give the exact facts connected with the unfortunate tragedy; but the testimony taken in the trial of this cause, in the Madison County Circuit Court, will appear in full in the proceedings of the trial which are set out in detail further on, and from this testimony readers are permitted to draw their own conclusions as to what the facts of the killing really were.

CHAPTER III

LINDSEY GIBSON GIVES UP TO THE OFFICERS.

LINDSEY GIBSON, after the killing of William Prater, gave himself up to James Richey, the justice of the peace in the township where the killings occurred, and, after a informal examination, he was discharged, and remained in that neighborhood three years, when he removed himself to Crawford County, Arkansas, a distance of about seventy-five miles.

In Crawford County he settled down in a populous neighborhood, near the village of Mountain-burg, and again engaged in farming, which avocation he has there continuously followed for the last twenty years, never once supposing that this long forgotten killing of William Prater would again be resurrected against him.

But in this he was mistaken, for in 1877 the grand jury of Madison County returned into court against him an indictment charging him with murder in the first degree for the killing of William Prater.

But, notwithstanding Lindsey Gibson heard of this indictment being preferred against him, he made no effort to evade arrest or flee the country. He remained at home, cultivating his small farm, and frequently visited the cities of Van Buren and Ft. Smith, which were only distant twenty and twenty-five miles respectively, from his humble little country home.

It was well known by sheriff and other officers of Madison County all this time where Lindsey Gibson resided, but they made no effort to arrest him. He also made two visits back to Madison County after he was indicted, but neither the sheriff nor any other officers made any attempt to take him into custody, and he had come to believe the indictment against him was not to be prosecuted. But again he was mistaken.

Lindsey Gibson Late private Co. G, 1st Reg., Arkansas . S. Vols. A Member of Rice Post No. 16, G.A.R. Department of Arkansas

CHAPTER IV.

RE-ARRESTED AND THROWN INTO JAIL. RICE POST, NO. 16, G.A.R., DEPARTMENT OF ARKANSAS, TO HIS RESCUE.

In the Spring of 1889, Lindsey Gibson went to the city of Ft. Smith to do some trading, and while there was arrested by a police officer of the city and thrown into jail. The sheriff of Madison County was telegraphed to come and take charge of the prisoner. The sheriff came and got the prisoner and carried him back to Madison County, where he was again lodged in a lonely, dreary jail.

After lying in jail for several weeks he was brought before Circuit Judge J. M. Pitman at Fayetteville, Ark., upon a writ of *habeas corpus*, for the purpose of making an application to be admitted to bail. The circuit judge not finding the proof evident, and the presumption great enough that the prisoner was guilty of murder in the first degree, admitted him to bail in the sum of five thousand dollars, which bail the prisoner promptly gave, mostly his comrades in Rice Post, No. 16 G.A.R., Department of Arkansas, and it might be said, in this connection, that his comrades in the post had an abiding confidence in his innocence. They knew he had killed William Prater, but not under such circumstances at to make the killing murder, or any other grade of unlawful homicide.

After giving bail Gibson again returned to his wife and

children in the little home in Crawford County, and now commenced the battle for his life, able counsel had been employed to assist the prosecuting attorney in his prosecution of the defendant. This the defendant well knew; he was also aware that new vigor and life had been injected into the prosecution, and that the country was being scoured for evidence against him. But what was he to do? He was poor and penniless. He had given his only horse to attorneys to make his application for bail. He was not able to employ counsel to defend him in the coming trial, in which his life, his all, would be at stake. He had no way in which to get able counsel, except to pay them, and that he was unable to do. He was in this straitened dilemma when his post, Rice Post, No. 16 G.A.R., Department of Arkansas, came to his rescue like a godsend from heaven. The post being composed mostly of poor men, was unable to help him much, but they did what they could , and issued a circular letter to their comrades of the Department of Arkansas calling for financial aid, and from this letter realized about one hundred dollars. This not being sufficient funds, Rice Post issued the following circular letter, which was sent throughout the United States, and was very generously responded to by G.A.R. Posts and comrades throughout the country, and the Women's Relief Corps, as an organization, also sent $100:

STATE OF ARKANSAS, COUNTY OF CRAWFORD, HEADQUARTERS RICE POST, NO. 16 G.A.R

DEPARTMENT OF ARKANSAS, MOUNTAINBURG, November 3, 1890.

To Our Comrades of the Grand Army of the Republic –
Greeting:
It becomes our painful duty to inform you that our brother comrade Lindsey Gibson, a member of this Post, in good standing, who served during the War of the Rebellion as a private in Company G, First Arkansas Infantry Volunteers, till honorably discharged, has been unjustly indicted, charged with murder in the first degree, in the Madison County Circuit Court. The killing occurred on the first day of April 1867, and the man killed was a rebel guerrilla named William Prater, and the killing grew out of the old hostile war feelings which we ex-union soldiers of the south had to combat and endure even unto persecution. The killing was entirely justifiable and Comrade Lindsey Gibson gave him self up for trail and was honorably acquitted by the examining court which examined the charge at the time of the killing and he was discharged. But ten years after the killing a different political party came to power in the state, and as a result the old charge was again trumped up against Comrade Gibson, which we assure you is only a prosecution on account of his being a union soldier. Comrade Gibson is a very poor man and a man of family and lives on a very small pension of $8 dollars a month. He needs assistance very much with which to employ counsel and pay other expenses necessary to the trial. Should he be convicted the penalty is death, and his trial is set for March 4, 1891. We, as a Post, are weak and poor, and are unable to give the needed assistance, and we therefore earnestly pray you to send at once such financial aid to Comrade Lindsey Gibson as you may feel able to give. Trusting we are not asking too much of our comrades in asking this charity for one in dire distress we remain,

Yours in F.C. And L.
W. H. Creedmore,
Post Commander.

A. Y. Killingsworth,
Adjutant Acting,

To My Comrades Abroad:

Below you will find a copy of the endorsement of Col A.S. Fowler, Department Commander of Arkansas which was appended to the circular letter sent out by my post in my behalf to the G.A.R. Posts of this State, but as there are but few Posts in this State, composed mostly of poor men, I received very little money over and above my expenses in sending out the circulars, and I am forced to the necessity of calling my comrades of the North. I would not do this were it not a matter of life and death to me, and a matter of so much importance to my family; and I feel assured that my old comrades in arms, when informed of my distress, will exhibit that spirit of charity that abounds in the breast of all that noble band of heroes known as the Grand Army of the Republic, by willingly responding to a fellow comrade when in distress

Yours in F. C. and L.,
Lindsey Gibson

HEADQUARTERS DEPARTMENT OF ARKANSAS,

GRAND ARMY OF THE REPUBLIC.
LITTLE ROCK, ARK., May 19, 1890

Having made inquires concerning the case of Comrade Gibson, mentioned in the above circular, I am satisfied that it is a meritorious case, and one that deserves our assistance. I therefore endorse the appeal and ask the comrades to respond to the same.

Official: A.S. Fowler, Department Commander
N. W. Cox, Assistant Adjutant-General

As above stated, this circular was generously responded to, and by this means the defendant was enabled to employ the best counsel that was to be had in the State of Arkansas.

The history of this trial would not be complete without mentioning Col. A. S. Fowler, the Past Department Commander G. A. R., Department of Arkansas, who so kindly and unselfishly interested himself and his comrades in behalf of his fellow comrade, Lindsey Gibson. But it should be known , that before Colonel Fowler would take any interest in the matter, as an officer of the G. A. R. of the Department, he took the time and pains to investigate the case thoroughly, and becoming satisfied from reliable sources, that the prosecution against the defendant was a malicious prosecution, and that , unless there was finical assistance rendered the defendant, Lindsey Gibson, for the purpose of employing able and learned counsel, and paying other expenses necessary to the trial, that the defendant would surely be unjustly hung. He then patriotically, humanely and justly came to the front and to the rescue, and endorsed a circular letter that had already been issued by Rice Post, calling upon the comrades of the

Department of Arkansas for financial aid in defense of this unjust persecution (called prosecution). This action of A. S. Fowler was fully approved by all of his comrades in his department demonstrated the fact that this was a meritorious case, and one that needed assistance undoubtedly saved an innocent comrade's life.

Col. A. S. Fowler, of Little Rock, Arkansas Past Dep't Commander G.A.R. Department of Arkansas

The assistance rendered enabled the defendant to employ some of the ablest attorneys in the State, and without them the conspiracy against the life of Lindsey Gibson would have been carried out to the letter, and he would have been hung to satisfy the blood-craving desires of his enemies and persecutors. This act of A. S. Fowler in coming to the relief of his fellow comrade, in distress, is one of the noblest acts that he may well feel proud of as one of the noblest and most unselfish acts of his life, and one that should endear him to the hearts of his comrades throughout the country, and an act that should stand as a living and speaking monument to the credit of the organization of the G. A. R., that the letters F. C. and L., are not mere empty symbols , but that they mean exactly what they stand for Friendship, Charity and Loyalty. Colonel Fowler is a native of Ohio, and enlisted in the Sixth Ohio Light Independent Battery, at the youthful age of thirteen years, and made a brave and gallant soldier till the close of the war, when he was honorably discharged. He came to Little Rock, Arkansas, in February, 1867, and shortly afterward he was appointed sheriff, then deputy collector of the United States Internal Revenue, which office he filled for a number of years with satisfaction to the people, as well as to the State and Government, and with honor and credit to himself. He now holds the responsible position of the Massachusetts Life Insurance Company for Arkansas and Texas, and his headquarters are at Little Rock, where his costly and elegant furnished office is located.

The writer has given this lengthy mention of Col. A. S. Fowler without his solicitation or expectation, because it is due him as the main factor in saving an innocent man from an unmerited ignominious death, and as this book will be incomplete without an engraving of this gentleman, and as many of his comrades have requested the writer to place his engraving in this history of the Lindsey Gibson murder trial, the writer has taken the liberty of doing so. Colonel Fowler's second term of office, as department commander, expired in April, 1891, and declining to be reelected, Judge W. H. Clayton, of Fort Smith, United States district of the Federal Court for the Western District of Arkansas was elected to succeed him.

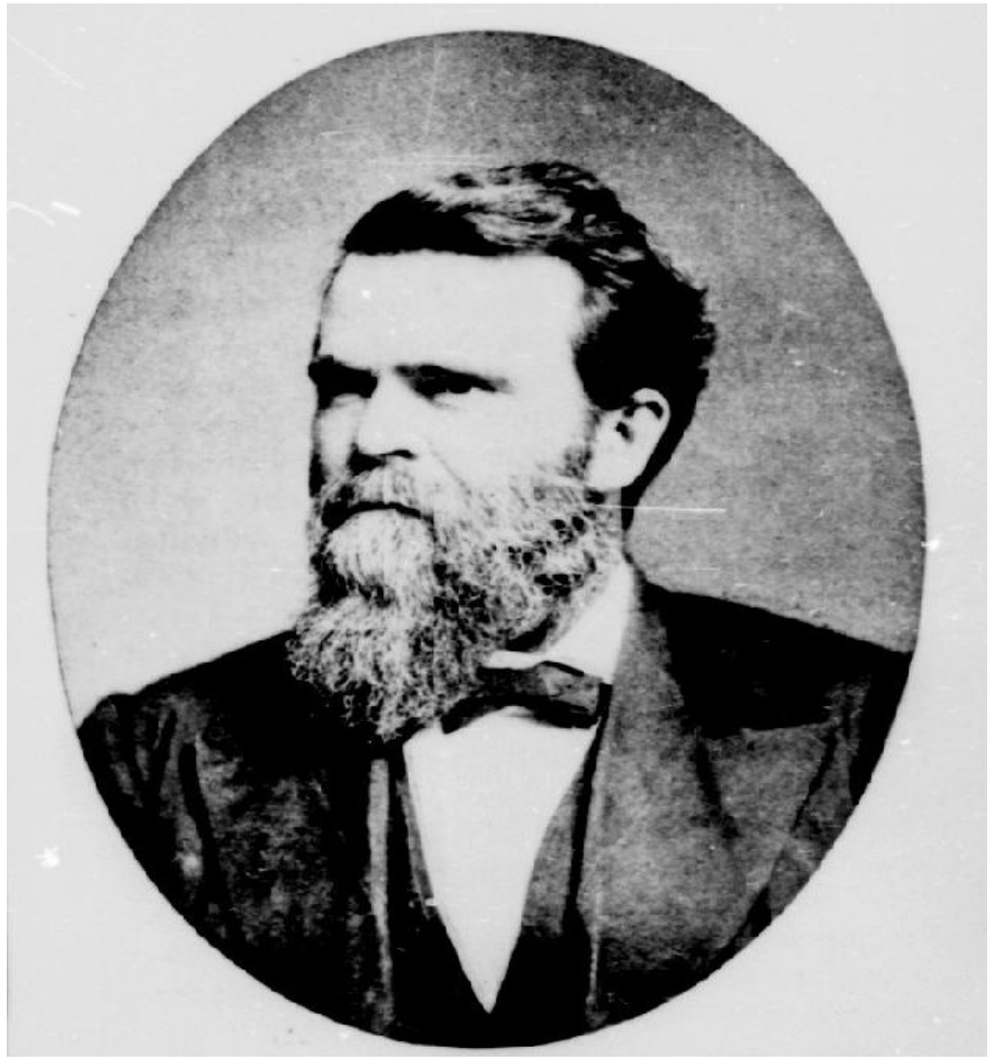
CHAPTER V.

GREAT AND DISTINGUSHED LAWYERS EMPLOYED FOR THE DEFENSE

The question now arose who should be selected and in trusted as the counsel to represent the defendant in his great trial, which was to come on in March, 1981, the trial having been set for the 2nd of March, 1891, at a former term of the Madison Circuit Court.

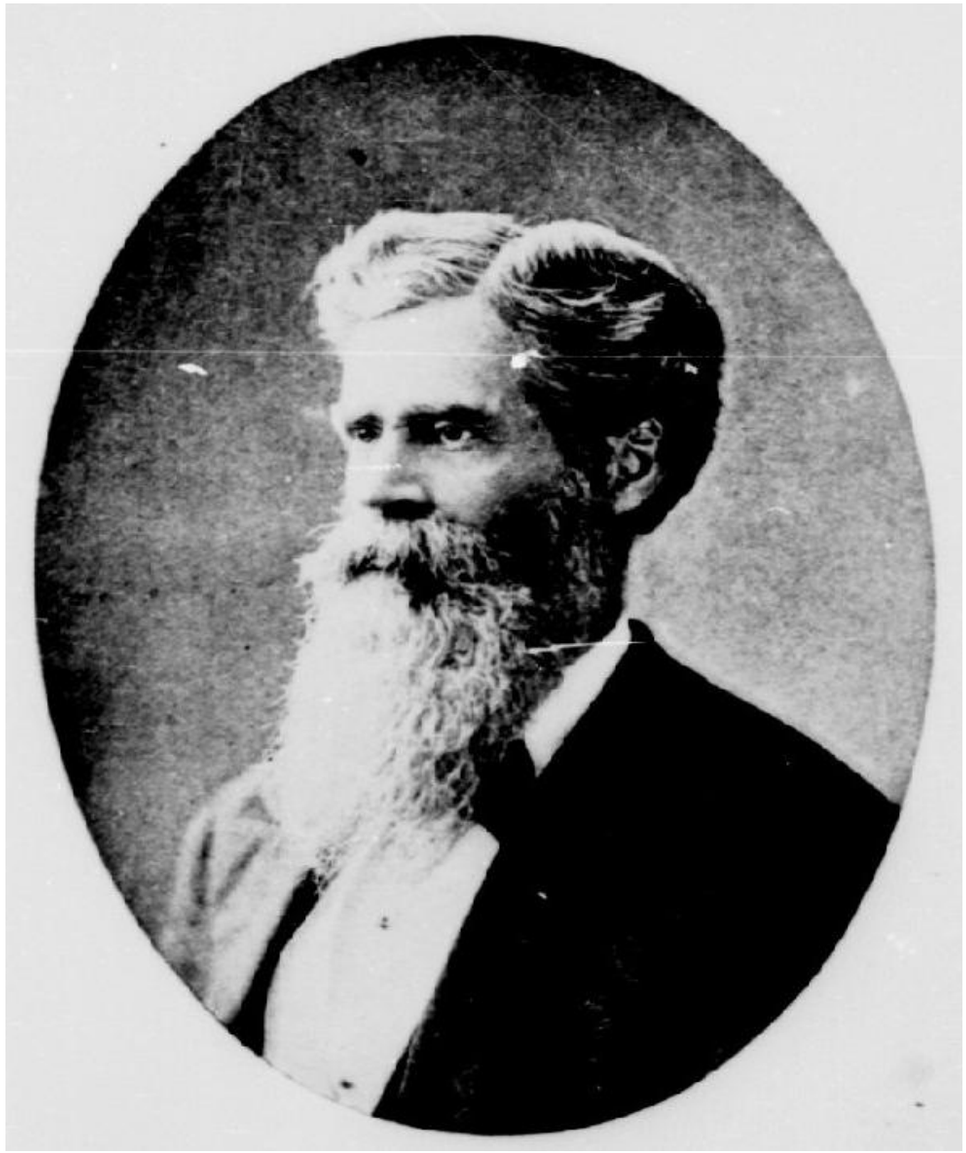
By reason of the ten thousand circular letters that had been sent out under the direction of Rice Post, NO. 16, Department of Arkansas, to the thousands of G. A. R. Posts of the United States. This case had obtained a national reputation and as a result applications for employment from attorneys poured in on the defendant from all quarters of the country. Some of these attorneys wanted princely fees, and represented themselves as being great lawyers in their own States. Others were willing to leave their own business and come hundreds of miles to Arkansas to defend this case, as a matter of patriotism. Others were anxious to travel great distances to appear for the defendant as his counsel for the sake pf the reputation of being connected with a murder trial of such national notoriety. And there was a still larger number of individuals, commonly called cranks, who wanted to be connected with this case in some manner, shape or form.

The truth is applications for employment by attorneys in case were really bewildering to the defendant. Lindsey Gibson, however, counseled with his true and tried friends, with those who had stuck to him through thick and thin, and they very properly and sensibly advised him to employ Arkansas lawyers, first on account of their familiarity with the Arkansas laws and the Arkansas code of criminal practice, and secondly on account of their influence with the Arkansas jurors who would be called upon to try the case. And that point being settled the next question was, who should these legal gentleman be? Some of the defendants friends suggested one attorney and some another, But after mature consideration by Mr Gibson and his friends, the following distinguished and well-known criminal attorneys, who had never solicited employment in this case (and never solicit employment under any circumstances) were selected as counsel. They were ex-United States Senator J. D. Walker, of Fayetteville, Ark.; ex-Congressman T. M. Gunter, of Fayetteville, Ark.; Col J. P. Byers, of Alma, Ark., ex-prosecuting attorney Fifth District, and Captain Wythe Walker of Fayetteville, Ark. These gentlemen were selected because they are great criminal lawyers in Arkansas, and stand at the head of the bar, and they would be regarded as great lawyers in any State of the Union.



Ex-U.S. Senator J.D. Walker, of Fayetteville, Arkansas

Hon. J. D. Walker served the State one term in the United States Senate from Arkansas and declined a reelection, because his large law practice paid him much better than holding office. He is a rich man, and lives in a elegant mansion in the city of Fayetteville.



T. M. Gunter Ex-Member Congress, 4th Cong. District of Arkansas

Col T. M. Gunter is an ex-colonel of a Confederate cavalry regiment raised and equipped in western Arkansas during the war, and did hard fighting as a rebel soldier in a number of great battles west of the Mississippi. He has served the Fourth Congressional District of Arkansas five terms in Congress, and he also lives in palatial style in Fayetteville, and his law office is a model of neatness and elegance. Colonel Gunter has two sons and a daughter. His son Julius is a circuit judge in Colorado; his younger son W. T. Gunter, is a brilliant young attorney of Salt Lake City, Utah, and his daughter Miss Gertie, is a beautiful and accomplished young lady of sixteen, and is the idol of her father's heart. Colonel Gunter does not look to be over fifty years of age and appears as young and active as a man of forty.

Col J. P. Byers of Alma, Arkansas Ex-Prosecuting Attorney, Fort Smith Court

Col J. P. Byers is a graduate of the Lebanon, Tenn., Law School, and is the ex-prosecuting attorney of the Fifth District of Arkansas. This district was one of the largest in the State, and included the cites of Ft. Smith, Van Buren, Dardnelle, Ozark, Clarksville, Morrelton, and Paris,

He filled two terms and made himself a terror to all evil-doers. Later he was a candidate for Congress against then sitting member Hon. J. E. Cravens, in the Third Congressional District --- the capital district of Arkansas --- and was defeated by one vote. He is one of most eloquent speakers in the State, and is one of the best all-around criminal lawyers in Arkansas, and gets the largest criminal practice of any lawyer in the West. He is a married man, and has a wife and two children. He lives in princely style at his elegant home at Alma, Ark., and is known at the banks as a man of means.

Captain Wythe Walker is the son of Hon. J. D. Walker, and at the time of his employment in this case, was his partner, He, like his honored father, is an able lawyer, and a fine speaker, and a gentleman of indefatigable energy.

We have referred to the attorneys employed in this trial lengthily, because the writer supposes that many contributors to the fund will read this book, and would like to know what character of men were employed with the generous contributions sent in by them.

CHAPTER VI.

THE JUDGE OF THE MADISON CIRCUIT COURT. THE COURT-HOUSE, ETC.

THE judge of the Fourth Judicial Circuit of Arkansas, of which Madison County is a part. is Hon. E. S. McDaniel. He is quite a young man for the position, being only thirty-nine years old, but, notwithstanding his youthful age, he is a thorough lawyer, a sound reasoner, and a just and honest man, and enjoys the unlimited confidence of both political parties. The Madison Circuit Court is held at a small unincorporated town called Huntsville, located about thirty miles east of the city of Fayetteville, in the midst of the foot-hills of the Ozark Mountains, and not nearer a rail-road than twenty-five or thirty miles. Huntsville, although a small town, is an old one. and during the war was the theater of the terrible guerrilla warfare that prevailed throughout the range of the Ozark Mountains, and it was often the seen of terrible and bloody tragedies. But the little town is now settled with many good people, who appear perfectly satisfied and content with their quiet little mountain homes, where they are never, and perhaps never will be, disturbed by the shrill whistle of the locomotive and the thundering rattle of the trains.

The court-house is situated in the center of a public square, and is a neat two-story brick building.

The public square is lined with small business houses and hotels, and, take it altogether, Huntsville might be considered an average country town for a mountain country.

CHAPTER VII.

COURT CONVINE FOR THE TRIAL OF LINDSEY GIBSON.

The second day of March, 1891, was the day for the Madison Circuit Court to convene.On that day the mountains and the valleys gave up their denizens, and the people flocked from far and near, all with their faces turned toward Huntsville, as the first day of court in a mountain county is the gala day of the year with the people. It is on this day that all the grand jurors and petit jurors are required to put in their appearance, and all the witnesses and litigants in all the cases, both civil and criminal, must likewise be on hand, and by custom this has become a sort of a fair-day, when people wear their best clothing and come to town to see and be seen. it has become a time-honored custom for the good farmers to bring their line stock and exhibit it on the public square, and lead their animals around and exhibit their fine points, as they do at regular county fairs in Kentucky and Tennessee. By ten o'clock the public square presented a picturesque appearance. It was fairly covered with living humanity and braying jacks and rearing stallions. At eleven o'clock the sheriff appeared at the court-house door and cried, Oyez, oyez ! the Honorable Circuit Court of Madison County is now in session." The judge proceeded at once to impanel the grand and petit juries, and the court then took a recess till one o'clock. At one o'clock the presiding judge again took the bench and remarked that he would proceed to call the criminal docket, and in a solemn voice he then said:

"The State of Arkansas versus Lindsey Gibson. What says the State? Are you ready? " The attorney for the State announced that they were not ready, and asked that the case be postponed till the following Monday, March 9th, which request was by the court granted, and the court proceeded to call other cases upon the docket the remainder of the week.

On Monday, the 9th day of March, immediately upon the convening of court, the judge upon the bench again called " The State of Arkansas versus Lindsey Gibson. What say you for the State?" The prosecuting attorney, M. C. Peel, and Col. J. V. Walker, answering for the State, said: " The State is ready for trial." The presiding judge, then addressing the defendant, said: " What says the defendant? Am you ready for trial? " Hon]. D. Walker, one of the defendant's counsel arose, and, addressing the court, said: " Your Honor, the defense announces ready;" and the great judicial battle for the life of Lindsey Gibson was now on.

CHAPTER VIII.

THE TRIAL.

THE court then commanded the defendant to come forward and be arraigned, and turning to the clerk commanded him to arraign the defendant. The defendant, who was upon bail, then stepped before the bar of the court, and the clerk proceeded to read the indictment to him, which was in the following words:

The State of Arkansas against Lindsey Gibson.

The grand jury of Madison County. in the name and by the authority of the State of Arkansas, accuse Lindsey Gibson of the crime of murder in the first degree, committed as follows, to wit: The said Lindsey Gibson, in said County of Madison. State of Arkansas, on the 15th day of April, 1867, with a certain pistol, loaded with gunpowder and leaden bullets, in and upon one William Prater, then and there being, unlawfully, willfully, feloniously, premeditatedly and of his malice aforethought, did make an assault.

And he, the said Lindsey Gibson, with the pistol aforesaid, so loaded as aforesaid, him. the said William Prater, unlawfully, willfully. feloniously, premeditatedly and of his malice aforethought. did shoot, and by the shooting aforesaid, with the pistol aforesaid, hint, the said William Prater, unlawfully, willfully, feloniously and premeditatedly, and of his malice aforethought, did kill and murder, against the peace and dignity of the State of Arkansas.

-E.J. STIRMAN,
Pros. Attorney Fourth Ju. Cir., Ark.
The clerk then read the endorsement upon the indictment, which was as follows:

No. 6: *The State of Arkansas vs. Lindsey Gibson:*
A true bill.
Joseph Thomas,
Foreman of Grand Jury.
Filed in open court this the 29th day of March, 1877.
W. A. GAGE,
Clerk.

The clerk of the court then addressed the defendant and said, " Are you guilty?" The defendant responded, “ Not guilty."

The defendant then took his seat by his counsel, who were ranged around a table. and the empanelment of the jury was proceeded with, which required the time of the court till the middle of the afternoon, as there were a great many challenges of jurors on both sides. The jury was finally selected -— was composed of seven Democrats and five Republicans, as follows : Jno. Rainly, D.; A. Routh, R.; Tobe Martin, D.; Jno. Robinson, R.; Wm. Richardson, R.; J. A. Sherror, D.; H. M. Shoud, D.; R. C. Littrel, R.; R. A. Dungeon, R; J.*Wapton, R.; Geo. Sims, D.; Wm. Bailey, D.; The jury were duly sworn by the clerk of the court. The witnesses on both sides were then called inside of the bar of the court and sworn, five at a time, by the old form, that is to say, that each witness was required to put his hand upon the Bible while he was being sworn, and at the conclusion of the oath was required to kiss the Bible.

After they were thus sworn, they were put under the rule, that is, required to leave the court-room during the examination of the witnesses, so as not to hear each other testify. All being ready. the prosecuting attorney now appeared before the jury and stated the case.

J. M. Peel, prosecuting attorney, spoke as follows:

"May it please the court, and you, gentlemen of the jury. It devolves upon me at this time to make an opening statement of this cause to you, for the purpose of giving you an insight into the theory of the State in this prosecution. I shall not attempt to argue the case in this connection and at this time, but shall merely give to you a general outline of what the State expects to prove, and will prove in support of the theory that the defendants guilty. in manner and form, as charged in the indictment, of murder in the first degree, and before proceeding further, I shall read to you the indictment in the case. which has been preferred against the defendant by the grand jury of Madison County. The indictment is as follows:

State of Arkansas against Lindsey Gibson:

The grand jury of Madison County, in the name and by the authority of the State of Arkansas, accuse Lindsey Gibson of the crime of murder in he first degree, committed as follows, to wit :

The said Lindsey Gibson, in said County of Madison, State of Arkansas, on the 15th day of April, A. D. 1867, with a certain pistol, loaded with gunpowder and leaden bullets,

in and upon one William Prater, then and there being, unlawfully, willfully, feloniously, premeditatedly and of his malice forethought, did make an assault, and he, the said Lindsey Gibson, with the pistol aforesaid, so loaded aforesaid, him, the said William Prater, unlawfully, willfully, feloniously, premeditatedly and with malice aforethought, did shoot, and, by the shooting aforesaid, with the pistol aforesaid, him, the said William Prater. unlawfully, feloniously and premeditatedly and of his malice aforethought. Did kill and murder, against the peace and dignity of the State of Arkansas.

E. J. STIRMAN,
Pros. Atty. Fourth Ju. Cir. , Ark.
Upon this indictment are the following endorsements:

No. 6.
State of Arkansas
vs
Lindsey Gibson.
A true bill.
Joseph Thomas,
Foreman Grand Jury.
Filed in open court this 29th day of March, A D. 1877.
W. A. GAGE,
Clerk.
Call:
H. B. SUMNERS,
D. P. TUCKER,
MARTHA WALKER.
LOUCINDA BRASHEARS.

"You notice, from the filing of this indictment endorsed upon its back. that the indictment was not preferred against the defendant by the grand jury of your county till the 29th day of March 1877, while the indictment charges that the offense was committed in April, 1867, And the proof of the case will disclose the fact that if any offense was committed it was on the first day of April. 1867. At least the evidence will show that William Prater was killed by the defendant, Lindsey Gibson, on the last mentioned date." In this State the statute of limitation run against all crimes and offenses except murder in the first degree, and treason, unless the prosecution is commenced or the indictment preferred against the defendant within three years after the alleged crime is committed. That being the law, in this, case you are bound to either find the defendant guilty of murder in the first degree, or you must acquit. In other words, as the indictment was not lodged against the defendant till about ten years after the deceased, William Prater, was killed by Lindsey Gibson, the statute at limitation will not permit you to find him guilty of murder in the second degree, or manslaughter, no matter what the evidence in the case may disclose for the prosecution, as to those two grades of unlawful homicide was barred long before this indictment was returned into this court. But permit me to say to you that I apprehend you will find no serious trouble in this case upon the score of the statute of limitations, for I assure you the evidence will disclose to you one of the most deliberate, premeditated, and cold-blooded murders that ever disgraced the fair name of the grand old County of Madison. The evidence will disclose that the virgin soil of your county has been stained and reddened by the blood of an innocent, inoffensive, crippled, unarmed youth, who was foully and cruelly assassinated by the defendant,

Lindsey Gibson, without justification or excuse, and the facts and circumstances connected with this case will show that the only reason the defendant was not indicted, tried, convicted and hung – as he should have been – was that the murder was committed during those dark days of reconstruction that followed the civil war, when the hand of Justice was stayed and the voice of law was hushed. But, thank God, although Justice has slept and slumbered for many long years, she has at last awakened and demands her own – that Lindsey Gibson pay the penalty of an outraged law that he violated when he shot down that poor inoffensive boy, from his young wife and child in the great long ago, and that he now hang by the neck until he is dead – dead – dead. The principal witness, old man Hiram Sumner, who saw the whole tragedy in which Lindsey Gibson murdered William Prater, has long since died. But we have enough evidence without that of the deceased, Hiram Sumner, to satisfy you that the defendant is guilty of murder in the first degree. We shall first introduce a witness by the name of William Tucker, a good and true man who will swear that on the day that Lindsey Gibson shot and killed William Prater, that he threatened, and not only threatened, but declared he was going to kill William Prater, and at the time Gibson was armed to the teeth – in truth, was a walking arsenal. We could prove the same facts by one Mr Rossin, who is sick and unable to be in court, and, unwilling to delay trial longer, we have gone to trial without him. In those days murders were not afraid to make threats, and carried them out; they had no fear of the law, as the law was not enforced.

We will prove, by a man named Kilgore, that on the very day that Gibson made threats that he would kill William Prater, he did kill him, and within two hours after he made the threats, and killed him by shooting him in the back, while the poor man was running for dear life. If those facts do not constitute murder in the first degree them I am frank to admit I do not know what it takes to constitute murder in the first degree, and if we do not establish these facts we do not ask for a verdict at your hands. Beside the testimony of these two witnesses, we will introduce quite a number of other witnesses, all whom will corroborate the witness Tucker and Kilgore, and some will tend to show the killing of Prater was a cold-blooded murder, and the defendant knew it to be murder at the time, and that he did not pretend at the time of the killing that he was justifiable, and that he even scared and bulldozed the coroner's inquest over the body of the victim. Why, gentlemen of the jury, at that time Lindsey Gibson was a holy terror and feared neither men nor devils, and the officers and the people were afraid Of him — and we will show to you that the pretended examination and discharge of Lindsey Gibson for this foul murder. By the justice of the peace sitting as an examining court, was a fraud. a hoax, and a farce. The testimony will show that on the day after the killing of Prater, Gibson, armed with two six-shooters, gathered an armed mob and went to the house of a political friend named Richie. and that then Gibson run the machine and had himself acquitted without a single one of the State's witnesses being subpoenaed or sworn, or examined. Oh, those were glorious days for murderers but in this particular case I trust that the day of retribution is at hand.

In conclusion, I will simply ask that you give the testimony careful and patient hearing, for I tell you I am very much in earnest in this prosecution. I believe the defendant guilty, and after you shall have heard all the testimony in the case and the instructions of the court, I shall argue the case at length and shall insist upon a verdict of murder in the first degree.

After Col M.C. Peel, prosecuting attorney, had concluded his opening address, Hon. J. D. Walker ex-U. S. Senator from Arkansas took the floor in behalf of the defendant, and addressed the jury as follows;

" Your Honor and gentlemen of the jury: You listened to the eloquent and distinguished prosecuting attorney make his fiery statement of this case to you with great patience and interest. You have listened to his narrative of blood, and heard his inflammatory remarks about dark and gloomy days of the past, and it did seem to me that the gentleman was just a little overzealous, that he saw blood in the moon, and wanted you to see it too, at the very outset in this case, before you had heard any of the evidence in the case. It did seem to me that the gentleman was trying unduly to prejudice your minds against the defendant before an iota of evidence was adduced before you. But, gentlemen, in selecting you as jurors to try this came, we tried, and I trust we have not tailed, to get a jury of true men —men of honesty and intelligence, who could not be biased or swerved from doing their duty by bloody and inflammatory speeches, such as the prosecuting attorney has just made.

I am satisfied the prosecuting attorney means well. But I must say that he, like all other prosecuting attorneys. has become hardened and calloused, and has got so that he believes that every man so unfortunate as to be indicted is guilty, and ought to be convicted. I was once prosecuting attorney of this circuit in my younger days. and I fell into the same error, but since l have arrived at more mature years I have discovered that grand jurors, in their one sided secret investigations. frequently indict innocent men, — men whom they would not have indicted had they heard both sides of the case, or had they called the defendants witnesses. The law recognizes this to be true, because the law says that the finding of an indictment against one raises no presumption of guilt against him. It is our view of the duty of the prosecuting attorney that he should only desire to see the guilty punished, and that if he should find that an innocent man is indicted it is as much a part of his duty to *nolle prosequi* the case as it is to prosecute the guilty. But, unfortunately, my distinguished young friend in his over-zealousness, never sees or knows an innocent man after the grand jury has covered him up with a bill of indictment. But, as I have stated, this is quite common with prosecuting attorneys. But, with you, gentlemen of the jury, you are not supposed to be for either side, you are presumed to only desire to see justice prevail. This gentleman tells you he is going to prove by one witness, called Tucker, that he heard the defendant, Lindsey Gibson, threaten the life of William Prater on the day that young Prater lost his life, and that the threat was shortly before the killing. Now, he may prove this by Tucker, but we will show you Tucker is an enemy of the defendant, Lindsey Gibson, and that he has

come here loaded to the guard with malice, with the sole object of swearing away the life of Lindsey Gibson. The prosecuting attorney has also told you that he is going to prove by a Mr. Kilgore that the defendant shot William Prater in the back, and with an air of confidence he rears back and grows ferocious and tells you that this is a willful, deliberate and cold-blooded murder, and talks fiercely of the cruelty of the defendant shooting Prater in the back. Now, I am not going to dispute that, if this had been done, it would have been murder in the first degree. But I want to tell you,right here, that Mr. Kilgore did not see the tragedy. He did not see the killing, and I think we will be able to show you that he was not on the ground or in sight of the killing at the time Prater was killed-—and that his evidence was an afterthought. But I shall earnestly ask you that when such evidence as this is adduced before you by the State, that you watch and weigh the witnesses in your minds as they testify before you, and I do most humbly and earnestly ask that you do not make up your minds in this case from their evidence until you shall have heard the evidence on the part of the defendant. We shall be able to prove by good witnesses that after the defendant had killed William Prater he made no attempt to escape, but, upon the contrary, asked people to go to the assistance of the deceased. We will show to you that the defendant immediately gave himself up, and asked for an investigation, which was given him, and he was discharged by the examining court; and that Gibson has ever since lived in this country, and made no effort to dodge or evade the law. We will have before you the evidence of a witness named M. L. Green, who will swear positively that William Prater was trying to murder the defendant Gibson with a knife when Gibson shot him.

We will corroborate witness M. L. Green with the testimony of a witness named Mitch Morgan, who was on the ground, and who will swear that Gibson tried to get the deceased to put up his knife, and tried to avoid the tragedy in every way possible and that finally, Gibson had to kill Prater or be killed himself. We will show you the location of the bullet-hole in the wall of the house, and show you that Gibson must necessarily have killed Prater the first shot, and that he did not shoot hint in the back, as he ran off. We will also show to you, as a part of the evidence in the case, plat of the premises where William Prater lost his life, which will assist you in arriving at the truth in the case. Besides this, we shall introduce a large number of witnesses, each of whom will testify to facts and circumstances conclusive of the defendant's innocence; but for the present we shall say nothing further till the evidence is all before you, after which. I presume, the case will be argued at full length on both sides."

All being now ready, the State, to support her case, introduced the following witnesses, who testified as follows:

WILLIAM TUCKER.---”My name is William Tucker. Live on White River, Madison County. Lived there about fifty years. I am acquainted with Lindsey Gibson. I knew him in 1867. I was then living on White River, about three and a half miles from old St. Paul. I was acquainted with William Prater and little Dock Tucker. Not related to them. I was in old St. Paul 1st day of April, 1867.

I saw Lindsey Gibson there at the blacksmith shop on that day —- time about ten or eleven o'clock. Gibson was in the shop two or three times. Gibson stated that he intended to kill William Prater and Dock Tucker. This was ten or eleven o'clock, and then he stated the same again about an hour or two before the killing. When the pistol fired I was in the blacksmith shop. Did not see Prater after he was shot. I heard of the killing shortly after it was done.

"I heard Gibson say that they had caught up with Cal Hastings and Tucker in Montgomery County, and that George Morris was killed. Mr. Rawson and l told him not to do it. He said that they had not got Sonny Tucker, and he intended to kill William Prater and Dock Tucker, that they had assisted." etc.

Cross-examination. —" Time, 1st day of April, I867. No one was present but Rawson, Gibson and myself the first time. I do not know where I was in April, 1866, 1868, 1875. I made a memorandum of the day. I do not know where the memorandum is. It may be destroyed. I do not know what has become of it. I made the memorandum with a pencil. I can write a little. l never was before the grand jury on this case. I was summoned as a witness before last court. I never told any one what I knew about it, unless might have been several years ago. Don't recollect any difficulty between Gibson and Rawson about the burning of a little child with a hot iron. Don't think Gibson stayed in the shop more than an hour. The shop is about 200 yards from where shooting was done. The Praters and I were good friends. I did not go up to see about the boy. I don't recollect that I told Sumner what Gibson had said. I remember of telling no one excepting Rawson."

JOHN KILGORE —" I live in the south part of Madison County. In October, I866, l lived near St. Paul. I knew William Prater; he was killed in April. On the day William Prater was killed I was working at Sumner's mill. At the time William Prater was killed he was leaning against the east side of the mill. Prater was about eighteen or nineteen years old. Dock Tucker was present at the time of the killing. Lindsey Gibson and Dock Tucker were quarreling, and Gibson jerked Tucker down by the hair of the head and stamped him until Tucker cried and hallowed for help. William Prater was standing near, and the defendant, Lindsey Gibson, drew his six-shooter, an army pistol, and shot at Prater, remarking, 'I have at load for you, too. ' The first time he missed Prater, and Prater ran, and the defendant, Lindsey Gibson, ran after him and shot him in the back, right when: the suspenders cross. William Prater had no arms and had made no assault on Gibson, and had nothing his hand. The first ball that Gibson fired went into a log of the house. When the second shot was fired Prater was running from Gibson. and was about twelve feet distant when the shot was fired. William Prater never spoke a word to Gibson before the shooting. Prater, when fired on, ran east. Prater never spoke until after he was shot by Gibson and had fallen, and then he said " to leave him alone. he would soon be dead, and he died in about four minutes. "

Cross-examination.—" At the time of the killing I was engaged in the business of getting wood for Summer's mill. I do not remember what time in the morning I went to the mill. When I got to the mill I found Gibson, Prater and young Dock Tucker. and I went to chopping wood.

When the quarrel commenced I quit chopping and stood still and watched until the killing of Prater by Gibson. I was not over ten feet from the southeast corner of the furnace. Little Dock Tucker and I got to the body first. I was on the east side of the mill building when the killing took place. I did not state before Judge Pitman, upon the application for bail, that I was standing on the south side of the building. The first shot went close to Prater‘s face. I know it did from where the ball hit the house. I don't know who commenced the quarrel. Gibson did not try to shoot Tucker; he jerked him down by the hair and when I got there that morning. The furnace was in the middle, as near as possible, of the engine-house. The mill was about 14 by 25 or 30 feet. I got to the body first, the body was lying on its back, and the blood was running out of the mouth. I never was before the grand jury in this. I have been before the grand jury since the killing of Prater, I think once or twice. I did not say anything about this killing because I was not asked concerning it. “ I know that the grand jurors all knew of this killing. I do not remember that I mentioned or told anyone what I knew about the killing for five years after the killing. I knew that this killing was on the first day of April; our Irish potatoes were up. My wife and I talked about the killing in I867. My son, E. L. Kilgore, married a sister of the deceased William Prater in 1868. I do not recollect how old my son was when he married; he is now thirty-nine years old.

Mrs. Sina Brashears.—“ My name is Mary S. Brashears. I live near old St. Paul; was living there in April, 1867. I was single then; my maiden name was Sumner.

My father, Hiram Sumner, owned a mill; the mill was about fifty or seventy yards from our house. I knew Lindsey Gibson and the deceased. I knew Prater when he was killed twenty-three or twenty-four years ago. I saw Prater before he died. l was there when he died. I was at home and heard two shots. I was in the room that was next to the mill; heard the shooting and went out in the yard. I went to the old mill where Prater had fallen. There was no one there except Martha Cornett. We thought he was shot in the face. We washed off the blood. He said he was a dead man; and he did not live over a minute- The wound was on his left breast. I did not examine his back. The hole was bleeding but little; no clothing was driven into the hole. There was a knife and piece of tobacco in his pocket. Mrs. Sparks examined his pockets. I think it was a penknife with two blades. The knife, when taken from his pocket, was shut. Don't remember who sat up with the corpse. He was laid out in the hall on his back on some planks on two chairs. I noticed blood dripping. Considerable blood went through the floor. I saw Lindsey Gibson after the shooting. He came into our yard and asked my brother if his horse was there; that he had shot at William Prater and guessed he had hit him, and some of us had better go and see about him. Don‘t remember whether he stated what he wanted with the horse."

Cross-examination. -" I don't remember whether any one else was there except myself and Martha Cornett. I don't remember of but one person coming after that. The shooting. I think, was in the afternoon. I remember one man coming there after, the boy died. He was a stranger.

I don't remember of John Kilgore being there that day. I was acquainted with Kilgore, and if he was there I do not recollect it. The man that came there was about thirty years old. I saw no lint on the bullet-hole. The hole was small and had no blue appearance, and looked white, and was bleeding bit a little. The body was lying on its back. Mrs. Sparks lives about four miles from there. She found the knife in the pocket. Our house was due east of the mill, and the body was in the opposite direction, perhaps a little north or west."

" *Re-direct examination*.---"I was some what excited. Prater was a married man."

MRS. A. S. THOMPSON. — " I am acquainted with Gibson and Prater. I lived with my father, Hiram Sumner. I was up in Mill Creek when I heard of the killing. I sat up with the corpse. It was laid out in the hall on some chairs and planks. Blood dripped from the body. Body was lying on its back. They took a small pen-knife and piece of tobacco from the pockets. The knife was shut. l saw the knife taken out and put back; don't know who took it out. I reached the house about dark; it was some time after that the knife was taken from the pocket."

MRS. Bolinger.--" I saw Prater pass our home a few hours before he was killed, and saw him after he was killed. He was coming down the river, going toward the mill, on horseback. I know Gibson, and saw him on that day. I heard him say he had shot Prater, but did not say why."

JNO. P. SALYAR.—-"I lived where St. Paul is now, in April, 1867. about two miles from old St. Paul, two miles from Sumner's mill. I knew Gibson and Prater in 1867. Prater was killed about 1st of April, I867. I was at this time at home, working in the garden. I went old St. Paul, and saw the body at Sumner's. The body was laid out on planks — I think, on his back. I saw blood dripping on the floor. I think the body was moved the next day. The body was taken to Polly Prater's. I saw the hole in the breast- The appearance was that the bullet came out the left breast. I saw the scar of a ball on the mill-house. William Prater was medium height."

Cross-examination.-"I examined the wound the next day after the killing. The bullet-hole was round; from the appearance would suppose the bullet was from a 44-caliber revolver. I do no remember who was present at the time I examine the bullet-hole. I am not a surgeon. I was not in the late war. l never examined this wound until after he was washed and dressed for burial. I am the uncle of the deceased. William Prater; he was my sister's child."

W. R. BRASHEARS.-"I live at St. Paul. I married the daughter of the late Hiram Sumner. He died about two years ago. The steam-mill of Hiram Sumner's was between fifty and seventy-five yards from his residence. The bullet-hole in the wall was four feet from the ground; there were traces lead. l examined this hole before I was married I came to this county in I868."

JOHN B. SALYERS (*recalled*).-—"I knew John Ritchie; he is dead. I was helping to dig the grave while Prater was being washed and dressed and Ritchie was left at the house.

I don‘t of my own knowledge that Ritchie is dead. I can't remember of any other man being left at the house but Mr. John Ritchie."

H. C. RITCHIE --"I knew John Ritchie. He died twelve years ago. He lived in the neighborhood of St Paul in I867.

CAPT. H. COMB.-—" I lived in St. Paul in April. 67. I was the coroner. I was sent for to hold the inquest on the body of William Prater. I did not go the body. I went to St. Paul and met Lindsey Gibson there. He was with George Row; they were both with six-shooters. Gibson told me that he killed Prater, and did not deny it, and there was no use in holding an inquest, and he rather we would not. Gibson said to me, you and I have always been good friends, and I not want to have any trouble with you.’ I've no interest in this prosecution, and not employed counsel to prosecute this case. I did not hold any inquest.” Here the State closed her case and the defense introduced the following witnesses:

CAPT J. W. BIVEINS.-—" I knew the location of Sumner mill in 1867. The mill-house was 18 by 40 feet long ; the house set lengthwise north and south ; the wood-pile was in front of the furnace. The engine and furnace was in the south end of the mill-house. and a little west of center. I don't think there was more than a cord of wood on hand the at time. It was directly in front of the furnace. I was at Fayetteville when the *habeas corpus* proceeding was being had, when the defendant made application for bail, and heard the witness, Kilgore testify. He said that at the time of the killing he was chopping wood."

Cross-examination.--"I was not interested in the mill; never measured the mill.

I do not know who built the mill. There was room on each side of the engine to walk around between the engine and wall of the house. There was a door in the southeast corner of the mill. I saw Colonel T. M. Gunter taking the distances and measurements of the mill and plat of the ground preparatory to making the plat."

W. E. TWEED.--- "I knew Lindsey Gibson in I867. I heard William Kilgore testify at Fayetteville, in the application for bail, that he was standing on the south side of the the mill the killing was done. The old mill shed was north of west from mill building when the shooting was done. Mr. Sumner’s dwelling was southeast of the building. The furnace was in the south end of the mill building."

Cross-examination.—“l was in Fayetteville, in the application for bail. I do not pretend I heard all that was testified to by William Kilgore. I never measured the building. The mill building has been torn down for some time."

W. A. MARRS. — “ I am acquainted with Lindsey Gibson; knew him in I867. I was present at the application for bail. I heard Kilgore testify. He said he was south of the mill, eight or ten feet from the furnace. The mill building was about thirty six feet long, made of logs. The building was eighteen feet wide. The furnace was in the east end of the building. The wood yard was at the south end of the building, handy to the furnace. The Sumner mill and Sumner residence was about fifty or seventy-five yards from the mill and out sixty yards distant from the old mill shed to mill.”

Cross-examination. --- " I never measured the mill. Never worked at the mill. There was room to walk between the engine and the walls of the house. There was a door on the east side. near the south side of the building."

JNO. B. HARRISON. --- " l know Lindsey Gibson --- I am fifth cousin. l lived at Hiram Sumner's house. I worked at the mill. The bullet-hole was pointed out to me by Sumner, in the wall of the mill building. The furnace was in the mill building, and sat at the south end of the building. The bullet that struck the wall had not gone in the wood far enough to stick. The bullet struck the building the northeast corner, about four feet up the wall."

Cross-examination. — “ I am about forty years old. I came to this State from Kentucky in 1868, and hired to Mr. Sumner, and lived at St. Paul for ten years. I think the mill building was torn down I869 or 70. The furnace was in the south end the building. The logs of the wall of the building were oak, — hewnlogs. The logs were seasoned picked in to see whether the ball was in the wood. I picked to see how deep the ball went in. The indenture made by the ball was about an eighth an inch deep."

HENRY BEVINS.-“ l was acquainted with Lindsey Gibson in 1867. I used to go to the old Sumner mill when I was a boy. There was an old mill shed northwest from the mill. The old mill shed had been an ox mill. The engine and furnace were in the south end of the mill building. The bullet-hole was in the northeast side of the building; the building did not set directly north and south. The bullet-hole was in the end of the building nearest Sumner's house.

The bullet-hole in the house was about even with my breast."

JNO. BEVINS. — " I know Lindsey Gibson and also knew William Prater. Sumner's house was south east of the mill. The mill set north and south. The furnace and engine were in the south end of the building. The wood-pile was right in front of the furnace. There was a hole in the end of the house at which the furnace was fed. The bullet In the wall was about breast high.

Cross-examination. — " There was a door on the east side of the south end of the mill building, but l think it was nailed up. I am forty years old. The was a well in the mill building."

GEORGE ROW.—-" l am acquainted with Captain Combs. I was down at the place where the body of Prater lay, and met Captain Combs. Think it was the day of the killing. I told Combs that Gibson did not deny the killing, and I saw no use in holding an inquest."

Cross-examination.—' Prater was killed before twelve o'clock. It was a long time ago, and I not remember well about the matter. "

J.W. BIVENS—" Gibson came to my house. I went with him to Richie's. This was the same evening of the killing, or the next evening."

M.A. MARRS.-" I went with Gibson early in the morning after the killing, to Mr. Richie's."

M. L. GREEN of Grant Co, Ore —" I am acquainted with Lindsey Gibson. | was stopping at St Paul, Madison County, in April 1867.. I was present at the killing of William Prater.

Lindsey Gibson had returned the evening before the killing, from a pursuit of horse-thieves. A half-breed Indian by the name of Hasten was with the horse thieves and was killed by the pursuing party. I was not personally acquainted with Prater. I helped take him to Sumner's house; was then told his name. I had seen Gibson once or twice before, but was not much acquainted with him at the time of the killing. Gibson shot Prater with a pistol — the first I heard of the difficulty. I asked Gibson how he had come getting the horses. He said, “Hush don't let us talk about that anymore. Some of the party of horse thieves are around now.” I sat down on a stick of wood. I observed two men standing back against the mill, heard one of them say to Gibson, “You did not get Sonny Tucker, did you,” That drew my attention to the conversation. Gibson said: ‘No I did not get him.’ Prater said: ‘If Sonny had been there there would have been several more killed. He is as good as ever they make them.” Gibson said: “I guess he will not come here any more.” Prater said: ' Yes, he will. I will see that he does come back.‘ The Tucker boy was standing there, a relative. he talked about the same as Prater. Gibson told the boy he was too small to talk to. He turned around as if he was going to him. The boy ran away from him and went in the mill. Then Gibson asked Prater if he still said Sonny Tucker would come back. Prater made no reply, but ran his hand down into his pocket and drew a weapon. I took it to be a knife. Prater made the assault by drawing the weapon. He was leaning against the wall of the mill when he drew the knife. Prater then pitched toward Gibson, and Gibson told him to stop. ‘I will kill every one of the damned horse-thieves.‘

Prater then advanced toward Gibson. with his drawn weapon. and was within three feet of him when Gibson shot him. Gibson did not advance toward Prater, but stood still.

“LUCIAN EVERTS, J.P.,
" Grant Co., Ore."

MITCH MORGAN.-—" I am acquainted with Lindsey Gibson, and was acquainted with William Prater during his life. He was killed the 1st of April I867. I was at the Sumner mill on the day of the killing. Uncle Hiram Sumner was with me in mill during the shooting. While I was in the mill a man came in and said ‘Will Prater and Gibson were about to get into trouble; that they were quarreling, and that Prater would cut Gibson with a knife. I heard loud talking on the outside. I heard one voice say, ' Put up that knife,’and the other replied, “You be damned,” and I immediately heard the report of two shots in quick succession, about as fast as I could count, and saw the smoke through the logs of the smoke-house."

Cross-examination.—“1 was summoned to this case during the last term of court. I had started to Missouri, and stopped at St. Paul to pay a debt. The man who came into the mill and told Hiram Sumner and I of the difficulty on the outside was running the engine. His remark was that Prater was going to cut Gibson with a knife. The engine was not running at the time, but had been running. I did not see the firing. I heard some one in a high tone of voice say, ' Put up that knife, and the other responded, “You be damned.” I am positive as to this. There were two or three other men on the outside of the mill-house beside Gibson ind Prater.

I did not go to render any assistance. I did not go to see how badly he was hurt. I saw one man and two women at the body. l had some curiosity about the matter, but did not go to the body, as I was a stranger in the county. My reason for not going to the body was that I had to appear at Springfield, M0,, as a witness, and was under a bond to go. I am not related to Lindsey Gibson."

LINDSEY GIBSON. — " I went on a trip after horse-thieves with the following men: Captain Bivens, George Row, W. A. Marrs, Matt Good, B. Robinson, A. J. Sanders, George Marrs and William Anderson. We overtook the horse-thieves-- Sonny Tucker and Cal Hastings. We captured one of the horses that had been stolen from William Tweedy. We got back On the last day of March, 1867'. In the battle with the thieves, Cal Hastings killed one of our party named George Marrs. Two others were wounded. On the following day, April 1st, I went to Sumner's' Mill, at St. Paul, to get some meal. When I got to the mill, old man Sumner and his engineer were the only two men at the mill. Afterward, two men, named Shields and Green. came to the mill. Green and Shields and I were talking of my trip after the thieves. The two young men, Tucker and Prater, came out of the mill, and Tucker asked me who got killed. I told him, and he said he might have told me that before I started. He said Sonny Tucker would get some more of us. I told him that might be so, as any cowardly horse-thief could kill a good citizen; and one word brought on another till I caught Tucker by the hair and jerked him, and Prater drew his knife and opened it, and I told him to put it up.

He drew the knife in a striking attitude and advanced upon me, and I struck him with my fist and knocked him back, and he started at me again, when I fired. I hit him the first shot, for I saw the dust fly from his breast. I did not follow him up. I went and tried to borrow a horse from Sumner to go and give myself up to the sheriff, I was not down the creek where the killing occurred any more that day, nor the next day after the killing. I went to Esquire Bivens the night of the killing. I stopped at Mr. Richie's, and the following night I stopped at my own home. l did not see Captain Combs on the day of the killing, nor the day after, and did not try directly nor indirectly to keep him from holding an inquest over the body of William Prater. There was no ill-feeling between William Prater and myself up to the time of the killing; in fact, Prater and Tucker and I were friends up to this time."

Cross-examination. — " I walked down to old St. Paul on the day of the killing. I went for meal. I took no grain, but bought my meal. I lived two and one-half miles from St. Paul. No one was at the mill when I got there except Hiram Sumner and Mr. Morgan, that I remember. The young men, Tucker and Prater, came on horseback. They came riding side by side. Green and Shields came down from the house about the time Tucker and Prater came up. Green and Shields asked me if I was not one of the party that followed the horse-thieves. I told them yes, but not to talk too loud about the matter, as there was some parties here who were suspicioned of being implicated with the horse-thieves. The two young men, Prater and Tucker, got into a scuffle, and Prater asked me loan him my pistol — this was shortly before the killing- but I did not let him have the pistol.

Tucker said Sonny Tucker would kill every damned one of us. I said that would be an easy matter for a cowardly horse-thief could kill a good citizen. He said Sonny Tucker was as brave as I was, and then I caught him by the hair of the head. At that Prater drew his knife and opened it and advanced upon me, and said I could not do that. l told him to put up his knife. He said: ' You be damned.‘ and struck at me. I stopped at Bolinger's that evening, after the shooting, and told him I had had a difficulty with Prater and shot him, or had shot at him, I don't remember which. I don't think I owned a horse at that time. I rented land from Captain Bivens and raised a crop that year, and got a horse from Captain Bivens. I was not at the blacksmith shop of Tucker on the day of the killing. " There was not a good feeling existing between me and Mr. Rossen and had not been since the fall before. I have never had anything to do with Rossen since the fall of 1866. The witness Tucker was present when Rossen and I fell out in the fail of 1866."

JOHN BIVENS. --- " I was at Rossen's shop in the fall of 1866 when there was trouble between Rossen and Gibson, and the witness, William Tucker, was present."

WILLIAM TUCKER. — "Lindsey Gibson and I. Stafford staid at my house some time past. Gibson asked me why I was not subpoenaed, and I told him I wanted nothing to do with it."

ISAAC STAFFORD. — "William Tucker told me at his house in February, ‘89, he knew nothing of the Gibson case, and would have nothing to do with it. I live in Crawford County, Ark, and went up to St. Paul with Gibson."

Cross-examination. --- " Tucker lives about one mile and a half from the railroad. Gibson and I went to stay all night with Tucker. Gibson and I walked down to Tucker's, and next morning walked to the station. I brought up the subject Tucker. I asked him what he knew about case. I knew he lived in the neighborhood, I wanted to know what he knew about it. I him aside and had a private talk with him, and Gibson came up and heard a part of the conversation."

J. H. VAN BRUNT. -—" I know Lindsey Gibson. seen the old Sumner mill. The bullet-hole the mill wall is on the east side of the north end the building. The bullet-hole was a little long looked like some one had pricked it with a knife. It was about three years after the bullet is said to have struck there that I examined the wall bullet-hole."

W. A. Marrs.--- " I have seen the bullet-hole in wall of the Sumner mill. It is in the east side the northeast corner. It struck the wall about and a four feet high, about six or seven feet from the corner."

Cross-examination. —" The logs of the mill were oak and seasoned; the bullet-hole was not round but rather lengthy ; this was the only bullet-hole I saw in the wall."

STATES REBUTTAL.

MRS. BOLINGER.—" On the 1st day of April, I867, I saw William Prater; he was riding on horseback. I saw him get down off his horse and pick up a package. He was by himself and was riding toward the mill.

I saw Gibson; he came to our house on that day and asked to borrow a pistol. He said he had killed a man and wanted to get away. I know Green; he staid at our house to have his eyes doctored. My husband was a doctor. Mr. Green was almost blind; he wore his hat all the time, even at the table, when he was eating. He kept his hat pulled down over his eyes. His eyes were very much inflamed, and he could not see how to get around."

Cross-examination. — " I know Gibson asked my husband for a pistol. I do not know whether Gibson remained in the country or not after the killing. The man Green walked with a stick, and sometimes went to my father's house alone."

Mrs. Sina BRASHEARS. —-- " I knew one M. L. Green who lived in St. Paul in 1867. He had sore eyes when he came, and they were sore all the time he was there. He wore his hat pull down over his eyes all the time. He had to walk with a stick, and he had to be told what was on the table to eat, and waited on. We would set a chair at the table at meal times and assist him to it. His eyes were no better when he left St. Paul."

Cross-examination. — " He sometimes went out side by himself."

WILLIAM TUCKER. --- " On the 1st day of April, 1867, I saw Gibson at St. Paul. He had on no overcoat. His pistols were plain to be seen. I know Mr. Combs; The day after the killing also saw Lindsey Gibson. I was summoned to serve on the coroner's jury. I saw Gibson and Row and Captain Combs together. "

Cross-examination. -— " I was subpoenaed to serve on coroner's jury. I lived three and one-half miles from Sumner's. I only got as far as Uncle John Sumner's about nine or ten o'clock. "

DEFENDANT'S REBUTTAL.

H. C. RICHIE. -—- " On the day after the killing M. L. Green came to my house on horseback; he appeared to get around as well as the others. He came to my house with a crowd and left with the crowd. Lindsey Gibson was in the crowd."

CAPTAIN BIVIENS.—" On the day after the killing M. L. Green went to Esquire Richie's in my company; he went on horseback, and appeared to get along very well, and see about as well as the rest us."

Cross-examination.—"l don't know how many were in the crowd. We went with perhaps eight or ten."

MR. McADOO. --- " I was at Esquire Richie's on the day after the killing of Prater. M. L. Green went along with us, on horseback. He appeared to see as well as any of us."

Cross-examination. ---" I think M. L. Green got on his horse at Mr. Bolinger's. I do not recollect anyone assisting him to get on the horse. I think he got on the horse without assistance. I know he rode up to Richie's without aid. I think Green wore a cap on that day. I did not see Mr. Green when he dismounted. Green's eyes were sore."

W. A. Marrs. ---- " M. L. Green rode to Esquire Richie's on the day after the killing of Prater. He had granulated sore eyes; the lids appeared to be a affected, but the eye-balls did not. He got around all right without difficulty. He went with the crowd to Esquire Richie's. There were thirty or forty men in the crowd. He was bare-headed in the house after we got to Richie's. I do not remember whether he wore a cap or hat. He had an ordinary case of sore eyes. and was at Dr. Bolingers to have his eyes treated. I do not remember seeing Green using a stick."

Cross-examination. -— " It seems to me we got to Richie's on that day by ten o'clock."

The above and foregoing was all the evidence adduced before the jury upon the trial of the case, and the court now proceeded to give to the jury, in writing. the following instructions before the argument of the ease:

" First, the court instructs the jury that to constitute murder in the first degree, the jury must be satisfied, from the evidence, beyond a reasonable doubt, not only that the defendant, without any justifiable cause or legal excuse, killed the deceased in manner and form as charged in the indictment, but they must further believe, from the evidence. beyond any reasonable doubt, that at the time defendant shot the deceased he had formed in his mind a willful, deliberate, malicious and premeditated design and purpose to take the life of the deceased, and that he shot the deceased with the intention of effecting that purpose.

That, although the jury may believe, from the evidence, beyond a reasonable doubt, that the defendant, without justifiable cause or legal excuse, killed the deceased, still, if they entertain any reasonable doubt whether the killing was willful, deliberate. premeditated and malicious, they cannot lawfully find the defendant guilty of murder in the first degree.

" The court instructs the jury that if the killing of the deceased was the result of malice suddenly produced at the time the deceased was killed by defendant, and if the killing was without premeditation and deliberation, then they are not authorized by law to find the defendant guilty of murder in first degree.

" The court instructs the jury that, though they may believe the killing of deceased was unlawful. that of itself raises no presumption that the killing as murder in the first degree. unless the circumstances show, beyond a reasonable doubt, that the killing was willful, deliberate, malicious and premeditated and that, unless deliberation and premeditation be shown by the evidence, the offense could not be greater than murder in the second degree.

" The court instructs the jury that *willfully* means intentionally; that *deliberately* means that the act was not done in a sudden passion ; *premeditatedly* means thought beforehand. By the term *malice* is meant that condition of mind which prompts one to take the life of another without any legal justification or excuse.

This is its legal meaning, and not mere spite, ill-will, or hatred, as the term malice is commonly understood ; and by *malice aforethought* is meant that the act of killing, which this condition of mind prompts, must have become premeditated. *Feloniously* means wickedly and against the admonition of law. To constitute murder in the first degree, the homicide must contain all the elements of willfulness, premeditation, deliberation, and malice aforethought, as these terms or elements are thus denied, and the State must prove their existence, and each of them, beyond a reasonable doubt, or the defendant should be acquitted. If the jury believe, from the evidence, that immediately before the shooting, the defendant was engaged in a quarrel with deceased and another, and that the killing was the result of a sudden heat of passion caused by an attack upon him by deceased and that there was provocation thereby, appeared sufficient to make such passion irresistible, he would not be guilty of a higher offense than manslaughter.

" If the jury believe, from the evidence, that the defendant was assaulted by the deceased in such way as to induce in the mind of the defendant a reasonable and well-grounded belief that he was actually in danger of loosing his life, or suffering great bodily harm, then he was justified in defending himself, and killing the deceased, whether the danger was real or apparent. provided defendant did not ring about the difficulty, and acted in good faith and not in a spirit of revenge. That if the jury believe, the evidence, that at the time defendant shot the circumstances surrounding defendant .. such as in

sound reason would justify or induce his mind an honest belief that he was in danger receiving from the deceased some great bodily and that the defendant, in doing what he did, was acting from the instincts of self-preservation then he should be acquitted.

That if, from the evidence. the jury have a reasonable doubt as to whether the offense, if any was committed by defendant, was murder in the first degree, or murder in the second degree, as directed by the court, then they should acquit. That defendant was guilty only of murder in the second degree, or manslaughter, he could not lawfully be convicted. unless the indictment had been against him within three years after the killing of deceased. That if, from the whole evidence this case, the jury have a reasonable doubt as to whether the defendant is guilty of murder in the first degree, they should find the defendant not guilty. By reasonable doubt is meant a real, substantial doubt, and one arising out oi the testimony in the case, or from a lack of testimony. I do not mean a possible, conjectural or far-fetched doubt, or one hatched up for the purpose of acquittal. A reasonable doubt is one for which a reason can be given, and which, if arising in the transactions of grave and important business of your own, would cause you to halt and hesitate. The jury are the judges of the credibility of the witnesses, and of the weight to be attached to the testimony of each and all of them. You are not bound to take the testimony of any witness as absolutely true, and you should not do so if you are satisfied, from all the facts and circumstances proved in the trial, that such witness is mistaken in matters testified to by him, or that, for any other reason, his or her testimony is untrue or unreliable.

" It is your duty to reconcile the testimony of all the witnesses, so that their testimony may all stand and be taken as true, if you can do so. if you cannot so reconcile the testimony, it then becomes your duty to weigh it, giving to the testimony any witnesses, or number of witnesses, such weight and credit as it is in your judgment entitled to. In weighing the testimony, you should take into consideration the number oi witnesses testifying to disputed fact, their intelligence, their means opportunities of knowing and observing the facts of which they testify, their demeanor upon the witness stand, their relationship to the parties, their interest, if any, in the result of the prosecution, the consistency of their story, the reasonableness of their testimony, its corroboration by other facts and circumstances in proof, and its accord with your own experience.

The defendant, Lindsey Gibson, is charged in the with the crime of murder in the first degree. To this charge he has interposed his plea not guilty, and that forms the issue that you are determine by your verdict. To authorize a conviction you must find from the evidence, beyond a reasonable doubt, that the defendant, Lindsey Gibson, in the County of Madison, in the State Arkansas, and at some time before the filing of indictment herein in court, with a certain pistol, with gunpowder and leaden bullets, in and one William Prater, then and there being, unwillfully, feloniously, premeditatedly and his malice aforethought, did make an assault; he, the said Lindsey Gibson, with said pistol, loaded as aforesaid, him, the said William Prater, willfully, feloniously, premeditatedley and of his aforethought, did shoot, and by the shoot aforesaid,

with the pistol aforesaid, said William Prater, unlawfully, feloniously, prerneditatedly and find each of the above allegations proved beyond a reasonable doubt, and you further find, beyond a reasonable doubt, that said William Prater died within a year and a day after receiving the fatal wound, you will find the defendant guilty – of murder in the first degree. Should you not find any of said allegations so proven, beyond a reasonable doubt, you will the defendant not guilty.

" Murder is the unlawful killing of a human being in the peace of a State with malice aforethought either express or implied. The manner of the killing is not material; further, it may show the disposition of mind or intent with which act was committed. Express malice is that deliberate intention of mind unlawfully to take away human life which is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing manifest an abandoned and wicked disposition. I charge you that, the killing being proved, the burden of proving circumstances of mitigation that justify or excuse the homicide shall devolve upon the accused, unless. by proof on the part of the prosecution it is sufficiently manifest that the offense committed only amounted to manslaughter, or that the accused was justifiable or excused in committing the homicide. I charge you that, all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other deliberate, malicious and premeditated killing, or which shall be committed in the

perpetration of or in the attempt to perpetrate arson rape, robbery, burglary or larceny, shall be deem murder in the first degree; all other murder shall murder in the second degree. l charge you that manslaughter is the unlawful killing of a human without malice, express or implied, or without deliberation. It must be voluntarily upon a heat of sudden passion caused by a provocation by apparently sufficient to make the passion irresistible. I charge you that, in order to authorize the jury to convict, it is not necessary that malice aforethought be shown to existed for any considerable length of time in the mind of the slayer; it is sufficient if it existed at any time prior to the firing the fatal shot. I charge you that, if you find, from the evidence, beyond a reasonable doubt, that the defendant at any time prior to the firing of the fatal shot formed in his mind the intention to take the life of William Prater, afterward sought Prater intending to bring about a difficulty, and did bring about a difficulty with Prater, intending to kill him, could not shield himself upon the plea of self-defense though the deceased had begun the attack I charge you that, before a person can justify taking a human life on the ground of self-defense. He must not be the aggressor or be instrumental or to contribute in any manner in bringing about the difficulty, and even if he is attacked first, or is about to be attacked, he must use all means within his power, consistent with his safety, to avoid the danger, avert the necessity of taking the life of his fellow-man. I charge you that self-defense begins in necessity and ends in necessity, and, before the defendant can justify in taking the life of William Prater, it must appear from the evidence, to your satisfaction, that the said defendant, Lindsey Gibson, did not

contribute to bringing about the difficulty, and that he took Prater's life on the sole ground of saving his own, or preventing some serious bodily harm being done him by the same William Prater, and not in the spirit of revenge."

Col. T. M. Gunter then addressed the jury. following is a synopsis of his speech:

" By leave of the court, gentlemen of the jury ":

" The charge against the defendant is murder the first degree. To this charge the defendant he is not guilty. This forms the issue you called upon and sworn to try. Before entering upon the facts as detailed by the witnesses, I wish, clearly to define the different degrees of homicide and especially murder in the first degree, and impress it upon you at this early stage of my argument, that this case is murder in the first degree nothing, as the lower grades of homicide are barred by statute of limitation. You have to convict murder in the first degree and hang the defendant or acquit; you cannot convict for either of the lower degrees homicide.

" With these preliminaries we are prepared to enter upon the facts as testified to by the witnesses and in presenting them I will follow as near the line of the prosecution and defense as is practical. In order to make myself fully understood I will your attention to five propositions :

" First — The origin of the difficulty with defendant deceased —- *stealing horses, etc.*

" Second --- The killing and all the facts and circumstances directly connected therewith. Prater and his associate (Tucker) came to mill, where defendant was, and commenced the talk about the horse-thieves, etc. The killing as testified by Kilgore (the State's witness). Kilgore entitled to credit from his manner of testifying; a statement unreasonable, hence false. He (Kilgore) unnecessarily suppressed his pretended knowledge of the killing for ten or twelve years. This no honest citizen would do, and, being dishonest, jury ought not and would not believe him, etc. Kilgore contradicted by Greene, Mitch Morgan, and all the circumstances of the killing.

" Third – Threats by defendant against deceased testified to by Tucker (second State's witness). Tucker was unworthy of credit. His testimony was unreasonable. He failed to tell any one in regard to what he knew for ten or twelve years after The jury are warranted in disbelieving his manner of testifying. It was shown by defendant that he was not at shop, place where the threats should have been made. Gibson was examined by John Bevins. Discredited by Richie, Captain Bevins, McAdoo and Captain Marrs to defendant being at Sumner's on the next to the killing, etc., etc.

" Fourth — Wound, Prater was shot in front and not in back, as testified to by Kilgore, and partially sustained by Mr. Salyers, Mrs. Brashears and Mrs. Thompson. Wound higher in back than in front, wound larger in back than in front, and

in from the hole had a blue or scorched appearance, and round. The place where the ball hit house indicated clearly that the fatal shot was the first shot and made the impression in the wall. Second shot missed deceased and also missed house.

" Fifth—-Defendant and his friends tried to and did prevent a coroner's inquest, as testified to by Capt. Combs and Tucker. Both State's witnesses contradicted by Gibson, George Row, Richie, Bevins, McAdoo and Marrs, and clearly showing that Gibson sought investigation and obtained it, etc."

He then briefly summed up all the evidence, and showed defendant clearly justifiable in killing Prater. Mr. Gunter had no sympathetic appeals to make; did not ask an acquittal through tears and in the interest of a devoted wife and anxious children; but asked it strictly under the law as the jury would receive it from the court, and under the evidence as given by the witnesses. " The defendant's mouth is now closed, his case is in your hands. Deal conscientiously and fairly with him, and before the rising of the next sun his life will again be his own—he will be a free man."

Here Col. J. P. Byers, the third counsel to speak in behalf of the defendant, came before the jury and spoke as follows:

" May it please the court and gentlemen of the jury. It is a very solemn duty that is imposed upon you, as well as upon myself, this morning I say solemn on my part because I

appear before you as the spokesman for the defendant at the bar, whose mouth is closed, and who stands charged with one of the highest crimes known to the laws of our land, and for which, if convicted, the penalty is death. Should I fail to perform this responsible duty in presenting this case in all its true colors, or should I leave anything unsaid that should be said, I should certainly have cause in the hereafter for sore regret. But your duty is even more solemn and responsible than mine. for with you it is to say, upon your oaths, whether the defendant, a man created in the image of our Saviour, shall live or die. It is for you to say whether he has forfeited his right to live. It is for you to say whether he shall die an ignominious death upon the scaffold. It is for you to say whether his wife is to be a widow and his children orphans, with the stain of infamy left upon them-the infamy of being the widow and orphans of one who has been executed for murder. When you contemplate these things, well may you feel startled and appalled at the seriousness and responsibility of your duty to-day, well may you make haste slowly in arriving at your verdict, and well may you demand of the State that, if she expects a verdict of guilty at your hands that she present pure, untainted and contradicted evidence, and in such volume as to exclude every reasonable doubt before you return a verdict of guilty of murder in the first degree. I do not mention these facts for the purpose of alarming you or deterring you from the honest discharge of your sworn duty. for I take you to be men not susceptible of first degree murder, but I mention them in order that you may have a full appreciation of the fact that today the most important and responsible duty of your lives is imposed upon you, and may

God forbid that you should make a mistake in your verdict in this case, and in the long hereafter feel that you have the blood of an innocent man upon your hands. If you were called on to pass upon a case in which there were a hundred thousand dollars at stake, you would consider it a very serious matter, but let me assure you this case is more important to my client than a suit for a hundred millions of dollars, or even for the whole State of Arkansas.

" In this case the defendant at the bar is confronted by a dark and sinister plot—a conspiracy of stupendous proportions to swear away his life upon a trumped-up charge of murder that is said to have been committed nearly a quarter of a century ago, and I tell you that he is to-day being prosecuted by the able counsel paid by the plotters and conspirators against the life of Lindsey Gibson.

" I am not here to deny that, unfortunately, the defendant. on the first day of April, I867, killed William Prater; but I do deny that he killed him under such circumstances as to make it murder, and I say that there ism not a man in the world, who regrets the killing, or the necessity for the killing more than the defendant, Lindsey Gibson.

" I admit that the death of William Prater was unfortunate, but the evidence certainly discloses the fact that the unfortunate man brought about his own death by his own rash, hostile actions. I know that the State has proven by William Tucker that the defendant, on the morning of the killing, made threats against the life of William Prater and young Dock Tucker; but right here, at the very outset, the

conspiracy against the life of Lindsey Gibson shows its self in all its horrid deformity. William Tucker admits that he has kept his evidence a profound secret, locked within his own breast, till the last few years; that on several occasions he has even been before a grand jury of this county where he was sworn to tell the truth, concerning all crimes and misdemeanors, yet he opened not his mouth concerning what he now tries to make you believe was one of the darkest and most deliberate and premeditated murders that ever disgraced the fair name of your county; and he expects you to swallow his strange and unnatural story as you would swallow a sweet morsel. He says these threats were made at a blacksmith shop which was carried on in St. Paul by one Rossen and himself. He would have you believe that Lindsey Gibson came to this shop like a roaring lion and there made threat after threat, publicly, that he was going to commit a double murder. Now this is very unnatural. for no one will say that Lindsey Gibson is a fool, not even his enemies and persecutors; and if he did such a foolish thing as William Tucker says he did, he ought to be acquitted upon the ground of idiocy or insanity and sent to an insane asylum.

Now, the truth is Lindsey Gibson had not been at that blacksmith shop since the fall of 1866, at which time he came near thrashing Rossen (William Tucker‘s partner) for cruelly torturing a defenseless boy with a red hot iron. After this humane interference by Mr. Gibson the blacksmiths were his enemies. and he never went about them nor their shop, and I have no doubt that the evidence of this than William Tucker is the result of the hatred and revenge he entertains against

Lindsey Gibson on account of that long ago difficulty in the blacksmith shop. But Mr. Tucker says he was not at the blacksmith shop when this circumstance of Rosson burning the boy’s cheek happened. Now, right here he is squarely contradicted by not only the defendant, but by the boy who tortured and burned on the check on that day. That boy was John Bevins, who has grown to be an intelligent, middle-aged man, He swears positively that at this same William Tucker was there.

“ Again we are told by his old confederate comrade, Isaac Stafford, that this same William Tucker told him that he knew nothing concerning the killing of William Prater, and that there was no use in having him summoned as a witness on either side. Stafford swears that this conversation occurred. And only a few years ago. Yet Tucker also denies this conversation out of whole cloth. Thus you see that he is flatly contradicted by two disinterested witnesses, and we think that old maxim of the law, (*Falser in mu, falser: in omnibus*), might be appropriately applied to his evidence (false in one thing, false in all). His manner of testifying and his whole demeanor upon the witness-stand looked like the man did not himself believe what he was swearing to, and I don't believe he did. Well,now, after examining this man Tucker's evidence and exposing it to the light and glare of truth and reason, what honest juryman can give it any weight where the issue at stake is life or death?

“ The State next presented to you as a witness another arch-conspirator against the life of Lindsey Gibson, a man by the name of john Kilgore. And who is John Kilgore? He is

another of those purportedly sanctimonious specimens of good citizenship, who, like Tucker, says he knew that the killing of William Prater by Lindsey Gibson was a cold-blooded murder, and that he kept it a secret, locked in the deep recesses of his own breast, for over five years, without telling any one of the matter; and from his own statement it seems that he, too, had time and again been before the grand jury of your county, sworn to tell the truth, the whole truth and nothing but the truth concerning all crimes and misdemeanors of which he had knowledge or had received information; yet he said nothing about this killing, and when pushed by my associate, Senator J. D. Walker,he says, " I thought I was only summoned before the grand jury to tell of Sunday hunting and other Sabbath-breaking, and unlawful card-playing and small offenses of that character." Now, Mr. Kilgore is a man of too much sense and intelligence to have believed any such stuff; he is a man of too much sense to believe the great State of Arkansas wanted to prosecute only the trivial matters of Sabbath-breaking and other small offenses, and wished to let red handed, cold-blooded murderers go free, unwhipped of justice! No, the evidence of Mr. Kilgore shows that, long years after William Prater was killed, his (Kilgore's) son married into the Prater family, married the deceased William Prater's sister, and after this important event old man Kilgore remembered that the killing of William Prater was a deliberate and premeditated murder. as dark and foul as the depth of Hades itself, and at last he unlocks his lips and commences to work up this prosecution or, more properly speaking, persecution, against the

defendant, Lindsey Gibson. But "truth crushed to earth will rise again."

It seems that this same old man, Kilgore, was before Judge Pittman (the then presiding judge) at the city of Fayetteville on the application for bail in this case by the defendant, Lindsey Gibson, and that at said examination he testified that he was standing at the south end of the mill building when the shooting occurred; that he had been cutting wood for the mill furnace and that he heard the quarreling commence, and he quit chopping and stood stock still at the wood-pile and watched the shooting, and after the young man Prater was killed he was the first person to approach his body as he lay weltering in his blood. Now it so happened that this whole unfortunate affair occurred at the east side of this mill building, and at the north end of the building, and a diagram or plat of the mill building, including the location of the furnace and wood pile and grounds, was presented to Judge Pitman which clearly showed that if Kilgore was really standing where he swore he was standing when the killing occurred, he could not possibly have seen any of the difficulty, nor the shooting of William Prater. In other words, he could not have seen the shooting of Prater without seeing clear through two solid log walls of the mill. And upon the strength of this diagram, which clearly showed that Kilgore was either egregiously mistaken or had actually lied out of the cloth, the judge granted the defendant bail, which the circuit judge could not have done had he believed that the proof was evident or the presumption great that the defendant was guilty of murder in the first degree. But the witness Kilgore, seeing

his mistake in placing himself at the south end of the mill building in his testimony on the application for bail, now changes his evidence, and swears that he was on the east side of the mill building, and even has the audacity to deny that he ever testified at Fayetteville that he was at the south end of the mill building when the shooting occurred.

In this he is contradicted by William Marrs, Captain Bivens and W. E. Tweedy, each and all of whom testify that they heard him testify at Fayetteville in the matter of the application for bail, and that he really swore on that occasion that he was positively at the south end of the mill building when the shooting occurred. Whom are you going to believe? this man, contradicted by three good, disinterested witnesses? who are you going to believe them, and conclude he has simply lied with a view of swearing away the life of an innocent man. Again, Mrs. Brashears, one of the State's own witnesses, says she in company with one Miss Cornet, were the first at the side of William Prater, after he was shot. rendering him what assistance they could. She says she knows the witness Kilgore quite well—knew him then, and that he was not at the killing of William Prater; and, moreover. that she does not remember seeing him on that day. And I am disposed to believe he was not on the ground. You will remember that Mrs. Brashears was the single daughter of Hiram Sumner at the time of this killing, and this man Kilgore say he in at that time a hired hand of Hiram Sumner's, and that being case. Mrs. Brashears undoubtedly would have known her father's hired hand had he been present at the killing— as he swears he was. No, the fact is he was not

there. and his whole story I believe to be a creature of his own imagination. Mrs, Brashears has no interest in this prosecution; she did not come here of her own free will and accord. She was brought here by the strong arm of the law -—through this snow-storm, a distance of twenty miles, very much against her wishes, and at the peril of her health—to testify for the State; but it turns out that her evidence is of great value to the defendant, in contradicting the witness Kilgore,and she testified in such a manner that all who heard her were convinced she was telling the truth, and the whole truth, just as she knew it to be. “ In my experience as a criminal lawyer I have learned, when l want truth in its purity, not to hunt in whiskey halls, or in gambling saloons, nor among the dissipated men and women who look to the large towns and cities; nor do I expect to find truth from the lips of prejudiced, hypocritical conspirators against the life of a good man. But when I want truth in all its purity—»truth spoken that I would be willing to live by or die by-— I go to the farm cottages, and get the country mothers and daughters as my witnesses, and then I have evidence that the “thunders of hell” cannot shake or jostle. And, let me assure you, such is the evidence of this good country lady, Mrs. Brashears.

" The next witness of importance, upon the part of the State, is Captain H. Combs, who was the acting coroner at the time of the killing. He says the defendant, Gibson, in company with George Row, both heavily armed, met him on the public highway on the day after the killing, and whilst he was getting up a coroner's jury, and told him there was no use in holding an inquest, that they were good friends to him, and

intimated that there might he trouble if an inquest was held, and, therefore, he, the coroner desisted from holding the inquest, and upon this evidence the distinguished attorney, Col. J. V. Walker, plants himself and grows eloquent, and fairly makes “Rome howl.” But, when we come to investigate this testimony of Coroner Combs, we find that it, like the other testimony in the case, is the production of a prejudiced mind, and is totally unworthy of belief. In the first place, George Row and the defendant both deny it in toto - . Row says that he met the coroner himself, but that Gibson was not along. and that he merely suggested to the coroner that, as Gibson did not deny the killing, that he (Row) did not see any use in holding an inquest. I don't not know that Row did anything wrong in this, as our Supreme Court has repeatedly decided that when the cause of the death is known, no inquest is necessary over a dead body, and if the corner holds an inquest under such circumstances. that no fees will be allowed to the officer and jurors for holding such unnecessary inquests; and, such being the case, Mr. Row was right. But suppose. for the sake of argument, he was wrong. Is Mr Lindsey Gibson to be held responsible follow a conversation he never heard nor sanctioned, and knew nothing about? Captain Bivens and Mr Ritchie both tell you that on the morning after the killing he was with them, several miles from St. Paul, and could not possibly have seen the coroner at St. Paul, as testified by Captain Combs. Thus you see that Captain Combs is contradicted throughout. Again, don't you know that if Captain Combs had desired to hold an inquest, he had the sheriff of the county, with all his deputies, at his command, and he could and would have held that inquest if

he had desired to do so, in spite of Mr. Gibson, if Mr. Gibson opposed it, which he certainly did not. All the facts and circumstances show that, instead of Gibson trying to avoid or shirk anything in the way of an investigation, he went and gave himself up to the nearest justice of the peace, and asked for an investigation; that this was done before William Prater was buried, and that all the witnesses who claimed to know anything about this killing were sent for and inquired of, under their oaths, concerning the killing, by Esquire H. C. Richie, and after this investigation H. C. Richie, a duly commissioned and sworn justice of the peace. of more than ordinary intelligence, discharged the defendant, and that, after this, Gibson remained in the neighborhood during that year and made his little crop, upon which he fed his family. Does anything about this look like trying to keep anything in the dark, or does any act in this connection indicate a guilty conscience? We are told by Holy Writ “that the guilty flee when no man pursueth, but that the innocent are as bold as a lion and fear nothing.” In this unfortunate affair the defendant did nothing but exercise that God-given right of self-defense, a right guaranteed by high heaven -— and a right which even the beasts of the field and the birds of the air enjoy. Gibson felt that he had neither violated the laws of God nor man, so he feared nothing, and gave himself up to the officers of the law, and right here, in Western Arkansas, has he lived from that day till this, a period of twenty-four years.

“ As for the testimony of John P. Salyers, he is the uncle of the deceased, William Prater, and, an a matter of course, he

would like to see the defendant convicted, and would like to see him hung as high as Haman. This is quite natural, owing to the relationship between the witness and the deceased. In his eager desire to see the defendant convicted, he sees everything through smoked glasses, so to speak. He tries to leave the impression upon the minds of the jury that the deceased was shot in the back by the defendant. He says, in his evidence, that the appearances indicated that the bullet came out near the left breast; that there was no lint in the bullet-hole; that it was a nice round hole about the size of a forty-four-caliber pistol. Now, if the gentleman was a surgeon, or if he had served in the army during the war, he would know that the very reason that he gives for believing that the ball came out at the left breast would teach him that the ball entered the left breast direct from the pistol, as testified by the defendant. It is a known fact in surgery that at bullet generally tears its way out and often leaves a jagged or irregular hole, and often the hole is larger where the hall came out than where it entered. I see there are some old soldiers on this jury, who have seen hundreds of men after they were wounded in battle, and they will bear me out in the assertion that Mr. Salyer's own evidence shows conclusively that the ball was entered from the front by Lindsey Gibson just as testified to by Gibson in his examination as a witness in his own behalf. But this class of testimony goes to show to what straits the State's prosecutors have gone to bring about a conviction, regardless of right or wrong. But, thank God, you are presumed to be fair and just as jurors in this cause, and I know you have the good sense and intelligence to know what weight to give such chaffy evidence as that upon which the

State relies in this case for a verdict of conviction. As a matter of course if we were to consult the wishes and feelings of the relatives of people who have been killed, there never would be a case of justifiable homicide, and every killing, no matter how justifiable, would be a plain case of murder in the first degree.

The State, in furtherance of the theory that the deceased was shot in the back by the defendant, introduced as witnesses Mrs. Sina Brashears, Mrs. Martha Bolinger and Mrs. A. L. Thompson. all of whom are daughters of the late Hiram Sumner, the owner of the Sumner mill, where this tragedy occurred. I have nothing to say against these ladies, as I believe they are good, honest women. But I must say that their testimony wholly fails to support the State's theory in this respect. They say that after William Prater was shot, and after he died, that his body was carried to their father's house, and laid out in the hall of the house on planks placed on two chairs and that all during the night blood was dripping apparently from the back of the deceased and falling on the floor; that the body was laid upon its back and remained in that position till removed, the following morning, to the house of Mrs. Polly Prater. Now this may all be true, and doubtless, was true, but still that does not argue that the deceased was shot in the back. It is a well-known fact that in the case of any one shot at close range, as was the case here, with a forty-four-caliber pistol, the ball would have gone clear through the victim and made the indenture which was afterward seen in the wall of the house, and it is equally clear to my mind that the blood would flow from the wound under

the body. This is just as natural as it is natural for water or blood or any other fluid to run downward. In other words, l say that had the body been laid face downward. the blood would have flowed from the wound in the breast, and would have dripped on the floor; but as it was, the body was laid on its back. and hence the bleeding from the back, or beneath. I repeat that this testimony does not tend to show that Lindsey Gibson cowardly assaulted the unfortunate William Prater from behind and in the back.

Aside from this, Lindsey Gibson is well-known to be too brave a man to fire at the back of an adversary, and especially one on the retreat. He may be accused of some things, but I have never heard of him being accused of cowardice or unfair dealing with an adversary till now in this trial. But the strangest thing connected with this whole matter is this—that if the relatives of the deceased Prater really thought that he was murdered by being shot in the back, that not one of them took the pains to examine and see and ascertain whether there was a wound in the back or not, and to examine and see the nature of the wound, if there was one. All this goes to show that at the time of the killing it went as an undisputed fact that William Prater was shot in the breast by the defendant in his own necessary self-defense; and, from the location of the indenture made in the ‘wall of the house by the bullet, we can draw no other conclusion but that the same ball that killed Prater is the one that hit the house. There is one other circumstance I will refer to, as I do not desire to dodge anything in this case, and that is the additional testimony given by Mrs. Bolinger in rebuttal. When recalled as a

witness, she said “ that Gibson came to her husband's house on the day of the killing and asked to borrow a pistol, and said he had killed a man and wanted to get away.”

Now, this is very strange testimony. Gibson swears that the lady is mistaken; he says he asked to borrow a horse, and said he wanted to ride down to give up to the sheriff. The lady evidently did not understand Mr. Gibson; for why should he want to borrow a pistol when all the evidence goes to show that he had one? And some of the witnesses say he had two pistols of his own at the time, buckled around him; and the whole evidence in the case, with this one exception, goes to show that the defendant did not try to make his escape, and that there was no necessity for his fleeing the country. And, moreover, if he had desired to run off, there was no one trying to prevent him from going where he pleased. But the able attorneys who are representing the State try to make capital out of this circumstance that Gibson was armed on that day. and argue that his being armed shows that he came to the mill that morning with a view of having trouble, and with an intention to kill this young man Prater, should he meet him. In answer to that, the whole evidence in the case shows that Gibson and Prater had always been friends, and that this unfortunate affair came up suddenly and unexpectedly. And, so far as the pistol-carrying is concerned, this killing occurred shortly after the war, when it was not unlawful to carry arms, and at a time when nearly every man and boy in the country wore their pistols as regularly as they wore their hats or ate their meals.

" So much for the State's case. I have tried to review her

evidence fairly, justly and reasonably. I shall now briefly call your attention to the evidence on the part of defendant. We brought before you a gentleman by the name of Mitch Morgan, who has no interest in this case, and is in no wise related to the defendant. He tells you, upon oath. in such a way as to command the respect and confidence of the jury in his truthfulness, that he was at Sumner's mill on the day that the lamented William Prater lost his life. He says that he was in the mill building having a settlement with old man Sumner when the engineer came in and said that Gibson and Prater were about to have trouble, and unless Gibson was careful Prater would cut him with a knife; that immediately after he heard the voice oi a man say “Billy, put up that knife,” and another voice said, “You be damned,” and then two shots were fired, following in quick succession; that he then looked out and saw the smoke through the cracks of the house at the northeast corner of the building. This evidence is positive and unimpeached and unimpeachable, and, unless it is false, William Prater was the aggressor.

In further support of our theory that the defendant only acted in his necessary self-defense, we have the deposition of M. L. Green, who was present, and saw or heard everything that was said or done. He testified that Prater drew his knife and was rushing on Gibson when Gibson fired; that Gibson waited about shooting till Prater was within three feet of him with his knife drawn and held in a striking position, and that Gibson commanded him twice to put up the knife, and that Gibson finally had to shoot in order to preserve his own life. If this testimony is true. there can be no doubt but the

defendant is entitled to an acquittal. And I want to ask, in this connection, what incentive could this witness Green have to commit corrupt and willful perjury to save Lindsey Gibson? It seems that Lindsey Gibson and witness Green were mere acquaintances. It also appears that Green and Gibson have not seen each other for many long years, and that they live nearly a thousand miles from each other, so that they could not have gotten together and made up this story.

It is a notorious fact that Lindsey Gibson is as poor as a church-mouse, financially, and, therefore, could not have had money with which to bribe his witnesses. What object, I then ask, could Green have in swearing to an untruth? What could Mr. Green expect to gain by swearing to a lie for the defendant? What could he expect to gain by perjuring himself for Lindsey Gibson, except the wrath of God and eternal damnation? But permit me to tell you that men do not commit perjury for the mere safety of those accused of crime, unless there is some great and overpowering inducement, such as the love of one relative for another, as where one brother may save another, or a father save a son by false swearing. or where large sums of money are paid for the false swearing. But I assure you it is contrary to reason to say that a man will deliberately and corruptly swear in a ease where there is and can be no inducement for the commission of perjury. I speak at length on Mr. Green's evidence, because I believe every word he has sworn to is the pure, untarnished truth, and if it is the truth, Lindsey Gibson is an innocent as a new-born babe, and deserves acquittal at your hands. Lindsey Gibson's testimony has been permitted by the court to go to

you just the same as that of any other witness. The law authorizes this, and he has been sworn just as the other witnesses, and by the same oath as taken by the other witnesses, and the court has told you that you are to consider his evidence in arriving at your verdict.

That being the case, we have the testimony of three witnesses—Morgan, Green and Gibson, that Gibson is justifiable, for Gibson's evidence corroborates witnesses Green and Morgan throughout. Here we have the positive testimony of three witnesses as to the killing and the justifiable circumstances connected therewith, against the unsupported and trebly contradicted testimony of Mr. Kilgore, who would have you believe he saw the killing of Prater,when,by his own evidence, he could not, without looking through two walls of a log house. We are told by the Bible, from the lips of two or more witnesses shall all things be established, and in this case we have certainly carried out the biblical injunction by establishing the defendant's innocence by three direct witnesses. We also presented to you, as a part of our defense, the testimony of Capt. Bevins, W. E. Tweedy and W. A. Marrs, by whom we prove conclusively that Mr. Kilgore could not have seen what he pretends to have seen, and by whom we prove that Mr. Kilgore’s testimony before Judge Pitman on the application for bail, was radically and materially different from his testimony in this trial, and the court has instructed you that if any witness has made any statements out of court or elsewhere different from his testimony in this trial, as to any material fact or circumstance, that such contradictory

statement may be taken into consideration by you in determining such witnesses’ credibility, and, that being the rule of the law, I must admit that l cannot see how you can believe a word that Mr. Kilgore has testified to in this trial, for, as before stated, his testimony before Judge Pitman is as different from his testimony in this trial as day is different from night.

But, again returning to the testimony of witness Green, the able counsel for the prosecution, knowing the effect it would necessarily have upon an honest jury, have attempted to weaken its force by proving that he had the sore eyes at the time of this most unfortunate affair. It may be true that his eyes were sore, but you will remember that W. A. Marrs, Mr. McAdoo, Captain Bevins and the justice of the peace, l-l. C. Richie, all testified in rebuttal that whilst Green's eyes were sore, yet he appeared to see well and get around well; that he rode on horseback, unassisted, to the justice court trial at which Mr. Gibson was discharged from this accusation of murder. You will also remember that there were about thirty or forty men who went to that trial, and it would also seem that Gibson was acquitted largely upon the testimony of this Mr. Green's evidence. It will also be remembered by you that this justice court examination of Lindsey Gibson was the very next day after the killing of Prater. and don't you know full well that if a blind man had gone into that court and sworn that he saw the difficulty in which Prater lost his life on the day before, and had given the details of the affair that the justice of the peace or any of that vast crowd would have believed a word he said, and he would have been hooted out

of the court in disgrace by the jeers of the crowd, and Lindsey Gibson would not have been discharged and told to go hence without say. I am a strong believer in the proposition that as a rule public opinion is generally right, and it certainly appears that the good people of Madison County, at the time that Prater was killed, justified Lindsey Gibson in the killing.

It would be quite hard to make me believe that the good people, and especially the officers of the law at that time, combined together to condone a cold-blooded murderer, and whitewash a red-handed, black-hearted murderer as the prosecuting attorney would have you believe they did. I know, and you know, that had William Prater been cruelly and brutally murdered in Madison County by Lindsey Gibson in the manner as stated by Mr. Kilgore. the honest indignation of an outraged people would have moved heaven and earth to avenge the blood of William Prater. You know that public opinion never excuses or palliates murder, but more often goes to the other extreme. Lindsey Gibson has always been a poor man, and could not have influenced public opinion with his wealth, and another very strong circumstance in his favor is the fact that nearly every one of the old citizens who lived in the community have come as anxious spectators, and are watching and praying for his acquittal. " The court has instructed you that you must either find the defendant guilty of murder in the first degree, or you must acquit, that is to say, that before you can find the defendant guilty. you must find, beyond all reasonable doubt, that he killed William Prater feloniously, willfully, premeditated, and of malice aforethought. In civil cases you find your verdict in favor of

the side producing the preponderance of proof, but not so in criminal cases. The State must not only produce the preponderance of evidence, but that evidence must be sufficient to remove all reasonable doubt from your minds. But in this case, l assert, that even the weight of the evidence is on the side of the defense, and that, were this a civil case, you could not do otherwise than to find for the defense. But in this case, as the question in controversy is the defendant's blood, the law says that the weight of evidence is not sufficient, and that you must find, beyond all reasonable doubt, the defendant is guilt as charged. The law simply means by this humane and cautious principle, that it is better that ninety and nine guilty men should escape, than that one innocent man should suffer. But I am glad to say that in this case we do not rest or hang our hopes of an acquittal upon the question of reasonable doubt, but we ask, expect and demand an acquittal upon the evidence in the case and the instructions of the court, and when you retire to the jury-room to consider your verdict. I ask you to take the evidence of the witnesses and the instructions of the court as your guide or pole star, and I shall have no fear as to what will be your verdict. I beseech you not to permit the eloquent appeal of the able prosecuting attorney, Colonel Peel, to lead you from the true facts in this case. He will follow me with one of his touching and ingenious speeches, such as very few lawyers can make, in which he will try to prejudice your minds against the defendant at the bar. He will picture in a tragic manner the killing of William Prater, and speak loud and long about the death scenes at the Sumner mill.

He will tell you that the snows have fallen' and the flowers have bloomed on the grave of William Prater for twenty-four years, and that justice has slumbered all these long and weary years, but that at last she has awakened, and now demands her own of the blood of Lindsey Gibson. He will tell you of the young wife who was left a widow, to grope her way through a heartless world, and he will ask in her name that the blood of William Prater be avenged. But I trust you will not allow his eloquence and ingenious arguments to swerve you from your honest convictions in this case. We've selected you as jurors in this important case because we took you to be men, not boys— men who, when you knew your duty, had the nerve to do it, regardless of fear or favor, "although the very heavens should fall," and in this, I trust, we have not been mistaken. In this case the evidence is not sufficient to warrant a conviction, and I tell you now, that were you to render a verdict of guilty, there is not a man of you who would feel satisfied with yourself after you went home and thought of the matter calmly and coolly, and there is not one of you who would dare go to the hanging, lest it would haunt you the rest of your life. And should you, upon this scant evidence, find the defendant guilty, and he should be executed, I tell you, in all earnestness,that in the years to come your remorse and sorrow over your mistake would silver your hair and bow you for the grave, and you would secretly pray and call upon the very mountains to fall upon you and hide you from the face of the earth, and from an outraged public-. It is well, I beseech you, to make haste slowly when you are passing upon the question of whether your fellow-man shall live or whether he shall die,

for it is possible that you may do that today which in after years you would give worlds to undo.

I have in mind now case that I defended at Ozark, fifteen years ago. The defendant was accused of murder in the first degree. I did not think the evidence was sufficient to warrant a conviction, but in this the jury differed with me and found him guilty in spite of my honest and earnest appeals for his life. I appealed the case to the Supreme Court, but that court refused to set the verdict aside or grant a new trial, although the honorable court said in it decision that the evidence was barely sufficient to sustain the verdict. The day of the execution was fixed and on that day I went to the cell of the condemned man and told him that there was no longer any hope; that if he had a confession he had best make it; that if he was guilty I did want him to go into eternity with a lie on his lips. His remark was "So help me God I am innocent and have nothing to confess." He rode to the scaffold on his coffin, and just before the fatal trap was sprung, the sheriff asked him if he had anything to say. He remarked "Yes," and stepped forward, and with uplifted eyes toward heaven he called God to witness that he was innocent. The trap was sprung, and he was launched into eternity.

A few weeks after that I was shown a skeleton by some young doctors, and they horrified me by telling me it was the skeleton pf my client, whom I believed to have been innocent and unjustly executed. God knows I shall never forget those hollow eye sockets and grinning teeth and the long finger-bones.

I dreamed of that skeleton for weeks, but finally the spell wore off, and I had forgotten the case , when a few weeks ago I met an old man, gray-haired and bowed down, and tottering for the grave. He knew me, and said he was so glad to see me; that he had wanted to see me for a long time. But he had changed so much I did not recognize him. He had changed so much I asked him his name. He told me, and said he was one of the jurors who tried and convicted of murder in the first degree my client, who was hung at Ozark. He said the matter had preyed upon his mind; that he was afraid that the jury had made a mistake; he was afraid the blood an innocent man was on his hands. He said he could have no peace of mind that the trouble was driving him mad. He asked me if I could give him any assurance that the man was really guilty, so that he might ease his mind and die in peace. I told him I was sorry I could not ease his conscience, but that really I still thought that jury had hung an innocent man. The pain and distress of that poor old man is beyond my power of description. He turned from me, and. with an groan, he said: “May God have mercy on my poor soul.”

“ Now, gentleman the jury. I ask you, in heaven's name don't do that to-day, which, like the man I spoke of, will haunt you to your dying day. I pray you do not do that to-day which in the future you would give worlds to undo. I assure you, the defendant, Lindsey Gibson is innocent, and he certainly expects an honorable acquittal at your hands. He now lives and is regarded as one of the good citizens of my county. His wife and children are there now praying a just God to guide

and direct you in this most important proceeding. I ask you to acquit him. The law and the evidence will warrant you in acquitting him. Send him home with me to his distressed wife. that my heart may be made to feel glad to see his kind, good wife take him once more to her arms and kiss him again and again, and hear her shower her blessings upon you and yours. If you do this you will feel happier when you go home, and your own wives and little ones will love and bless you for daring to do right. I now leave the case with you, trusting that God will lead your hearts to do right in this most important matter of your lives."

The next speaker was Col. M. C. Peel, prosecuting attorney, who now appeared before the jury in an easy, graceful manner, to make the closing argument in the case. In this connection it maybe said that he is one of the most earnest, eloquent and forcible speakers in the State. He is a son of Congressman S. W. Peel, the present member of Congress of the Fourth Congressional District of Arkansas. He is a thorough lawyer and is also very popular with the people, and is regarded as a power before a jury, to be dreaded by his adversaries at the bar. He spoke as follows:

" By permission of the court, gentlemen of the jury, I now come before you to perform my last solemn duty in this trial—that of making the final and closing argument in behalf of the government of State of Arkansas. To perform this task is no pleasant undertaking; for, let me assure you, it is no pleasant matter for me to come before this jury and ask at

your hands a verdict of death against a fellow-man. Yet it is a duty I have assumed by virtue of my oath of office. It is a duty I owe the good people of this commonwealth. It is a duty I owe an outraged, flagrantly violated law. It is a duty I owe an old moss-covered, sunken-in grave up near St. Paul, in your own county. l mean the grave of that poor murdered boy, William Prater, which has now received the rains of summer and the snows of winter for twenty-four years, whilst Lindsey Gibson, the murderer, has played the bully and posed as a hero. Yes, this is a duty l shall not shirk. God forbid that I should; and I ask you to take the same serious view of this matter, for you, like myself, are sworn to do your duty in this case truly, honestly, fearlessly and conscientiously, regardless of fear or favor. Of course I know it is a sad thing to convict one of murder in the first degree. It will be a sad thing to convict Lindsey Gibson of murder in the first degree, but it is not you who do it, it is the law, and you are merely the instruments of the law. If Lindsey Gibson has made his bed of thorns he cannot blame you, as the servants of the law, for laying him upon it. He cannot shake his hoary locks at you and say you did it. He can only say he did it himself; that he sealed his own fate at the time he so ruthlessly shot that unarmed boy in the mill-yard at old St. Paul in 1867. It seems strange that a man who had been endowed by high heaven with almost supernatural strength — for Lindsey Gibson at that time was almost a giant in strength and manhood -— that he should have committed this crime. Lindsey Gibson, with his great prowess at that time, could have torn young Prater into quarters and shreds with his naked hands. He could have

taken young Prater in one hand and young Tucker in the other, and worn the ground out with them.

But, no; he thirsted for blood, human blood, as does the hyena of the jungle. and he got it, and to-day the blood of that murdered boy is crying for vengeance at your hands. Lindsey Gibson is in no proper light, nor is he a proper subject to ask pity and mercy at your hands, for he showed no pity or mercy to his slain boy victim. The proof even shows that when poor Prater had fled, with the impediment of a crippled leg — fled like a hunted fawn — that, with the fierceness of a bloodhound, or sleuth-hound, the defendant pursued him and shot him in the back; shot him to death--shot him down like a dog. Oh! that terrible scene immediately after the shooting. There the boy Prater lay wallowing in the dust, the blood flowing from his mouth, nose and ears and breast, begging the three or four bystanders to leave him alone in his pain and his misery; that he would soon be dead. When I think of that death scene, although I knew not William Prater, yet I can hardly keep back the tears which involuntarily come to my eyes. It does seem to me that that scene surely caused the very angels in heaven to look down and weep, and it does seem to me that surely the finger of God has set this prosecution on foot. It does seem to me that this is a verification of that passage of the Scriptures —“ Vengeance is mine, and I will repay, saith the Lord thy God.” It surely must be that this jury is to-day called upon as instruments to wreak that certain vengeance that is declared in Holy Writ against him who unjustly sheds the blood of his fellow man.

When I think of all these harrowing, appalling and

revolting circumstances that surround this killing; when I reflect over the blood-curdling. blood-freezing, cold-blooded actions of Lindsey Gibson on that tragic day, I must say that I am at a loss to see where Col. J. P. Byers‘ pathetic and touching appeal has a proper place in this particular case. It is common. however, with criminal lawyers, when they lack evidence, and when they see that their clients are guilty, and are about to he justly convicted, to try tn sidetrack juries from their true line of duty by eloquent and touching appeals, such as my friend Byers has made in this case. but I trust that you will not permit his eloquent and touching remarks to deter or halt you in the discharge of your duty, --- your sworn duty here to-day.

“ Gentlemen of the jury, in this case the defendants own guilty conscience tells him he is guilty, and ought to be hung, and he thinks to cheat the gallows of its own -— his body --- by employing the strongest array of counsel that can be had in the State, for the purpose of stifling and overriding justice. You see him surrounded by lawyers of national reputation. He has ex-United States Senator IJ. D. Walker, and ex-Congressman T, M, Gunter, both of whom have national reputations as great criminal lawyers, and both known to have a large influence in this county. But not being satisfied with this array of counsel, he has also employed the gifted and eloquent ex-prosecuting attorney of the Fort Smith District, Hon. J. P. Byers, thinking that with the influence of Senator Walker and Colonel Gunter and the eloquence of Colonel Byers, they would be able to carry the jury by storm. Not

content with this array of legal talent, he also has the brilliant young attorney, W. D. Walker, and at the last moment has employed Mr. Roberts, your fellow-countryman, on account of throwing in the balance his local popularity and influence in this town and county.

I tell you that innocent men do not need such a formidable array of counsel in their defense. It is only when a man knows he is guilty, when he knows that he ought to be and will be convicted unless something desperate is done, that he employs such an array of counsel as has been employed in this case. The attorneys have, from the beginning, thrown into the case all manner of rubbish they see fit to call evidence, with a view of attracting your attention from the real issue in this case. They have brought before the jury a great many things that do not properly belong to the case, and all this is done with a view of breaking the force of the evidence on the part of the prosecution. It is done for the purpose of with drawing from your mind the harrowing details of that dastardly murder, committed on the first day of April, 1867. This is the work of his ingenious counsel, who know full well that, unless something was done to break the terrible force of the damaging evidence on the part of the State, the defendant must surely hang. But there is evidence on the part of the State that cannot and has not been obscured or covered up — evidence that conclusively establishes the defendant's guilt of murder dark and foul, murder in the first degree. and murder that deserves death as its just reward.

This evidence is of such a character, coming as it does from such pure and disinterested sources, that it is bound to

sink deep down into your minds and hearts, and rivet conviction upon your minds whether you desire it or not. I repeat that if you are, as you stated when taken upon this jury, unbiased and unprejudiced either for or against the defendant, this evidence upon the part of the prosecution must necessarily have convinced you of the defendant's guilt. And I want to say right here that if this evidence we have submitted to you on the part of the prosecution does not make a clear case of murder in the first degree, then I never saw a case of murder in the first degree; and if l wanted to commit murder in the first degree I would not know how to go about it if this is not that crime.

In making out this case, we have spared no time nor pains nor expense in getting all the evidence before you, because we wanted you fully satisfied that the defendant is guilty. We did not want you to have to act upon meager or uncertain proof. We wanted your minds to be satisfied beyond all reasonable doubt that the defendant is guilty, and we flatter ourselves that we have not failed. We first prove to you, by the testimony of William Tucker, that Lindsey Gibson declared, just two hours before he killed William Prater, that he intended killing Prater; that he made this threat and declaration in a most solemn and deliberate manner; that he came to the mill heavily armed, armed with one, and, perhaps, two large army pistols, and that afterward, on the same day, he carried his threat into execution by shooting William Prater in cold blood. This shows greater coolness and deliberation than I ever knew or heard of before in a murder case in any civilized country or nation.

This man Tucker, who testified to this important fact, looks like an honest, truthful gentleman, and he acts and conducts himself like a gentleman of that character. He is an old Christian citizen of your own county, and has lived here nearly a quarter of a century, and if he was not and is not worthy of belief, I ask why the able counsel for the defense have not impeached him by bringing in his neighbors and having them swear that old man Tucker is unworthy of belief. The attorney for the defense knew Mr. Tucker was a witness in this case, and he knew what his evidence the case would be. They knew exactly what he would swear, and they knew that his evidence, if true, and believed by the jury, would certainly hang the defendant; yet they have made no effort to prove that Mr. Tucker is unworthy of belief. The fact is they leave old man Tucker unimpeached, and I am here to tell you he is unimpeachable. I say it as a fact that old man Tucker stands as well in Madison County as any man in it, and you are bound to believe him, and bound to give full faith and credit to every word he uttered in his testimony. You cannot arbitrarily throw aside the evidence of a witness, and the court will so instruct.

I know that Colonel Byers made savage onslaughts against the witness Tucker and his testimony, in his speech to you to-day; but this merely shows that Colonel Byers thought the evidence was hurting his case; he knew that if Tucker's testimony was believed by you that you must convict his client, hence his vigorous attack against Tucker. But, gentlemen, I want to call your attention to the fact that, notwithstanding old man Tucker stood a half day’s cross

examination and cross-fire by the able attorneys for the defendant, trying to make him contradict himself or vary from the truth, they wholly failed; and, moreover, they even failed to entangle him; and after the cross-examination had concluded, old man Tucker stood like the rock Gibraltar — unscathed, untouched and unshaken.

Yes, gentlemen of the jury, these able gentlemen having failed to shake old man Tucker in their rigid cross-examination, they now try to weaken him in your estimation by bombarding him in their speeches. These able gentlemen have used unnecessary and uncalled for criticism, and, in fact, have spoken harshly of him; but as before stated, that only goes to show what mortal fear they regard his evidence. Indeed, what motive could this witness Tucker have in swearing to a lie at this late day of his life, after living a long and useful life as a good citizen? There is one thing certain, it cannot be that he has bribed, for the money in this case is all on the side of the defendant. I have commented upon Mr. Tucker and his evidence perhaps to a greater length than is necessary. but I thought it was due Mr. Tucker, owing to the importance of his testimony and owing to the unjust criticisms hurled at him by the attorneys for the defendant.

We will next call your attention to the testimony of John Kilgore. This gentleman has no interest in the case, it does not make him richer or poorer, no matter how this case goes. He is simply an intelligent old farmer, who is the soul of truth and honor; a man, who would not know how to tell a lie even if he wanted to; a man who stands well in your county as a good citizen; a man who belongs to the church and a man

who obeys both the laws of God and the laws of man. What does this good man say about the killing? Why, he says that Lindsey Gibson first brought this whole tragedy on by attacking a young boy called Dock Tucker; that he grabbed Tucker by the hair of the head, and jerked him down and stamped him in the face with his boot-heels, and that, with one foot on young Tucker‘s neck, he drew his pistol, and remarked to the youth William Prater: “l have got a load for you, too,” and fired square at him; that he did this when Prater was in nowise bothering or molesting him. and that this defendant even fired the second shot at Prater as Prater ran off, and that he thinks that it was the second shot that hit Prater. He says and he swears that he saw all this in broad daylight; that he was working at the Sumner mill on that day, and that he was standing where he could see and hear all that was said. He says that he went to the body of the slain boy, and details that sickening sight of the boy wallowing and rolling over in the mill dust, with the blood flowing from his mouth, nose and ears, groaning and begging to be let alone till he could die.

Gentlemen of the jury, I dislike to think of that sickening scene. It is positively too revolting to even contemplate or think of, had it not been that the good people of that community were at that time being terrorized by Lindsey Gibson and his crowd, and afraid to crook their fingers, I have no doubt that the good people would have risen in their might and summarily lynched and hanged Lindsey Gibson by the neck till he was dead. Let me tell you, gentlemen, those were dark and gloomy days in Arkansas. Those were days

when Lindsey Gibson and Bob Row and their little clique could over awe and terrorize the good people with impunity, and they did it.

The good people that Colonel Byers spoke of in his argument were afraid to open their mouths or raise their hands, lest they should be shot down. But, thanks to God! those days have passed, and it is to be hoped forever gone, when a few men like Lindsey Gibson can commit murder and run rough-shod over the people of a whole county, without the fear of even being arrested, much less punished. The fact is, this inoffensive old man Kilgore was afraid, at that time, and for years after, to open his mouth, lest he should be assassinated, and, knowing what I do, I have no doubt but what he would have been assassinated had he spoken of what he knew. I am glad that there are men on this jury who know something of those dismal times when Lindsey Gibson and Bob Row, and their associates, had this country by the throat, and ravished justice and crucified law and good morals. But the attorneys for the defense tell you not to believe this good old man, John Kilgore, because some five years after Prater was killed, Kilgore's son married the deceased William Prater's sister.

I do think this argument of the attorneys for the defense is simply absurd, and I must say that I consider it unworthy of serious consideration, and certainty am surprised at able attorneys offering such a flimsy pretext to an intelligent jury as a reason why they, as jurors, should throw aside the evidence of a good and true man. But these ingenious lawyers who are paid big fees to come here and defend Lindsey

Gibson, must earn their money —as they think. It would not do to plead guilty for the defendant, for that would be sure death to their client; hence they make all kinds of captious objections to everything offered in this prosecution by the State. They have got up a plat of the ground and premises where; William Prater was killed, and attempt by that to contradict and throw a cloud upon the testimony of Mr. Kilgore. Now, I have no objection to the plat, and am glad it was introduced in testimony. for if Mr. Kilgore was standing at the southeast corner of the mill building. where he says he was, the there was nothing to have prevented him from seeing everything he has sworn he saw.

These desperate and frantic efforts upon the part of the defense, simply show you how desperate they consider their case, and remind you of drowning men grasping at straws with the hope of saving life. To again return to the testimony. We have had before you Captain Combs, who was the acting coroner of Madison county at the time of the killing of William Prater. He swears to you in his testimony, that he desired in compliance with his official duty, to hold inquest over the body of the murdered youth, and with that object is view. he summoned several jurors, and was himself on the way to the body of the deceased, when he met Lindsey Gibson in the road; that Gibson was armed and in the company of that notorious Bob Row, when Gibson and Row stopped him and told him there was no use in holding an inquest over the body of deceased, and that they were good friends to him (Captain Combs), and did not want to have any trouble with him. Captain Combs did not want to be killed; he

did not want to be assassinated like young William Prater; he did not want to he launched into eternity just then, so he gave up his official duty and went home, after summoning the jurors to hold the inquest. This looks very much like conduct of an innocent man, does it not? Or does it look like the conduct of a guilty culprit who did not want an investigation, and did not want the truth to come out ?

It does look strange, indeed, that in a civilized community such high-handed, outrageous conduct could have been carried on, but it is a fact, nevertheless. I don't think there is just such another case on record, where a man could commit a cold-blooded murder. and refuse to let the coroner hold an inquest, and then deliberately take his armed crowd and go over to the justice of the peace and, without ever being arrested or disarmed, and, without any witnesses being summoned, have the examining justice whitewash him and justify him in murder as black and foul as hell itself. It is a wonder the great God above did not take a hand in that damnable proceeding and strike the whole mob dead, as he did Ananias of old for lying.

We have also the testimony of Mrs. Bolinger, who, by the way, is one of the most respectable-looking country ladies I ever met and who is a woman of more than ordinary intelligence. She is the daughter of the late Hiram Sumner, and was living in that neighborhood at the time of the killing. and was the wife of Dr. Bolinger. She testified to you that Gibson came to her house after the killing and said he had shot Prater and wanted to borrow a horse and another pistol. The question arises, what did he want with another pistol and

what did he want with a horse if he had killed Prater in self-defense, and what did he want with still another pistol if he was justified in what he did on that fatal day? Did he need the pistol to give up to the proper authorities? No; I am satisfied that Lindsey Gibson at first contemplated fleeing from justice, but when he saw that he had the people terrorized he determined to stay and throttle the law and defy the officers of the law, which he afterward successfully did. But another strange thing in connection with this killing: Of all the witnesses who were present at the killing, or who talked with Lindsey Gibson after the killing, not one of them says that Lindsey Gibson pretended or said that he had done this awful murder in self-defense. All that Lindsey Gibson did say to these witnesses was to remark, in a boastful way, that he had killed Billy Prater.

Another matter I want to call your attention to is this; It has been the main effort of the attorneys for the defense to try to make it appear that the first shot was the one that killed the deceased Prater. They do this to make it appear that Prater was not shot in the back, but was shot in the breast while standing facing the defendant days Gibson. Now, gentlemen, I do not care what view you take of murder --- either way is bad enough for the defendant. If the deceased was merely standing against the wall of that mill, or leaning against it, as some witnesses say, to rest his sore leg, when Gibson shot him, it was murder in the first degree; and if Gibson hit Prater the first shot , as the attorneys for the defense say, and Gibson himself swears he did --- for he

testified he saw the dust fly from Prater's breast when he shot him the first shot, then I do say that Gibson ought to be hung for firing on a man a second time, when he knew he had already killed him. According to their theory, Gibson continued to fire on his wounded victim, whether he hit him or not the second fire, and I must say I can't see any difference, so far as murderous conduct is concerned, between shooting a man in the back and missing. In other words, my theory is simply this: That if he hit Prater the first fire, it was murder in the first degree, and he ought to be hung for the crime; and if he shot him in the back as he ran, it was murder in the first degree of the most cowardly character, for which the defendant should be hung till he is dead, dead, dead, and I hope you will so find by your verdict.

" But the defense offers to you the testimony of one M. L. Green, whom no one knows; a stranger, who lives in Oregon, who it seems, was one of Gibson's friends in those awful days of the long ago. This man Green, in his testimony, tells a very strange story. His story does not have the ear-marks of truth, and it is inconsistent with the truth, and l am disposed to believe his testimony is a fabrication and a creature of his own fruitful imagination. Why do I say I think his evidence is a concocted fabrication? Simply because this man Green was at that time as blind as a bat—at least, that is what Mrs. Bolinger and Brashears both swear. They are good, truthful women, the daughters of old man Hiram Sumner, deceased, and they say that at that time Mr. Green was boarding at Dr. Bolinger's for the purpose of having his eyes doctored. These good women tell you that at the time of the killing he had to

be led to the table at meal hours, and had to be waited upon at the table as though he was a blind child ; they had to put his victuals on his plate, and tell him what it was they placed upon his plate for him to eat; that they even had to seat him at the table, and that he had to grope his way about the house with a stick. Now whom are you going to believe — this blind man Green, or are you going to believe these good women, who swear to you that Mr. Green could not have seen what he now swears he did see ?

" The defense also offers for your consideration,the testimony of one Mich Morgan, who says that he was also at the Sumner mill on the first day of April, I867, and that he was in the mill and heard some one quarreling on the outside of the mill; that he heard one voice say, "Put up that knife," and some one else say, "You be damned; " and then he heard two shots in quick succession, and looked through the crack in the mill and saw the smoke from the pistol. He says he did not go to the body of the dying boy; that he made no inquiry into the matter, and that he quietly left the mill, without telling any one what he knew. Now, gentlemen of the jury, the court has instructed that in determining what credit you will give a witness, you will take into consideration his manner of testifying, his means of knowledge, his intelligence, and any interest he may manifest either for or against the accused; and, taking this as the rule, I am not afraid that you will believe one word that Mich Morgan said. He acted upon the witness-stand as though he had come here to swear enough to swear the defendant out. His story that he was there when the

killing occurred, and did not go near the body of the wounded boy, is unnatural, and is contrary to the actions of men who happen to be present at a killing. And, moreover, if this man Mich Morgan was there on that day, it does seem remarkably strange that not a witness on either side saw him, and I am satisfied that even the attorneys for the defendant did not believe a word he said, and I certainly think they were ashamed for him. But the defense in this terrible strait put the defendant upon the stand as a witness in his own behalf, and as a matter of course he tells a tale of self-defense. What else could he expected? He has had twenty-four years in which to prepare his own story. What else could be expected when he knows full well that upon the issue of this trial depends the question of whether he shall live or die? I do not suppose there is a man yet born who would not pervert the truth in order to save his own life. I do not care how good a man is, or how bad he is, if he can save his life by swearing falsely, he is going to do it, and when you find a man who says he would not swear falsely, even to save his own life, you mark it down he is lying right then and there. Inasmuch as we suppose you will take the same sensible view of the matter, I do not think it necessary to discuss or comment upon the defendant's own testimony, and we shall simply pass it by unnoticed.

" We have now discussed the main points in this case. It is true that there are many small matters that we might call your attention to, but we deem it unnecessary. In this ease we do not depend upon small circumstances in asking at your hands a verdict oi conviction. We depend upon positive, direct and

overwhelming weight of evidence, that surely establishes the defendant's guilt beyond all reasonable doubt. We have tried to conduct this prosecution in a fair and honorable way. We have certainly not tried to take any unfair advantages of the defendant. God knows we would have been glad had the proof turned out so that we ourselves Could have believed that maybe the defendant was justifiable, and in that case we would cheerfully have asked this jury to render a verdict of not guilty. No, the proof shows the defendant to be guilty in manner and form as charged in the indictment. Guilty ! guilty ! guilty ! These are hard words. I am sorry he is guilty, so are you sorry, but, alas! he ought to have thought of this day of reckoning when he took the life of that defenseless youth. He ought to have remembered the commandment of God: "Thou shalt not kill." He ought to have remembered that a just God would not permit such a foul murder to go unnoticed and unpunished. He ought to have remembered that sooner or later he would be called upon to account " an eye for an eye and a tooth for a tooth.

" In this case the defendant may reflect that for the last twenty-four years he has been going on borrowed time, for the very day he murdered William Prater he forfeited his own life, and justly he has belonged by right to the hangman. Children have been born and now have children of their own since this dark and cruel deed was committed. it seems that justice has slept and slumbered, but she has at length awakened and now claims her own. The arrest of Lindsey Gibson may have been delayed, but he has been the gainer, for had he got his deserts, his grave would now be as old and

moss covered as that of his victim_ The attorneys for the defendant have told you many scary stories about men who were improperly convicted. They have exhausted their stock of raw skull and bloody bones stories to try to deter and scare you from your duty; but if you will have the manhood to do what you have sworn you would do. The people of this commonwealth expect you to do your duty to-day. regardless of tears or sympathy. Your own firesides demand that you'll do your duty, and if you do your duty you will by your verdict say: “We the jury find you, Lindsey Gibson, guilty of murder in the first degree, as charged.”

The argument of Col. M. C. Peel was closed it four o'clock Thursday evening and the jury retired under the charge of a sworn bailiff. At nine o'clock the following morning returned into court and announced that they had agreed upon a verdict. The court asked the foreman to hand the verdict to the clerk and the clerk in a clear tone " We, the jury, find the defendant not guilty.”

Thus ended the most exciting murder trials ever witnessed in the State of Arkansas. Throughout the trial the court-house was crowded to overflowing with anxious spectators, including a great many ladies, and after the verdict of not guilty the defendant was congratulated upon all sides. For the happy results of this trial the defendant is indebted to his charitable and loyal comrades of the G. A. R. and the generous women of the W. R. U.

APPENDIX.

FROM HEADQUARTERS WOMAN'S RELIEF CORPS,

DENISON, IOWA.
DENISON, IOWA, Dec. 1, 1890.

LINDSEY GIBSON, Esq., MOUNTAINBURG, ARK.,
DEAR COMERADE — Your letter to Mrs. Wittenmyer has been forwarded to me, and her answer also, which I enclose. I have to-day sent to Department Commander A. S. Fowler, Little Rock, Ark, the check for $100.00 voted for your assistance by Seventh National Convention, W. R. C. The vote of convention, making it a donation to the Department of Arkansas for your benefit, rather than a personal donation, makes it necessary for me to pass it to you through the hands oi’ the department commander. With Mrs. Wittenmyer sympathize with you in your unpleasant surroundings, and trust that means sufficient may be given you whereby to employ proper counsel to defend your case in such a way as to bring it to a successful issue. I shall be very glad to hear from you as to the progress of the ease.

Yours, most fraternally,
Mary Sears McHenry,
National President

FROM HEADQUARTERS WOMAN'S RELIEF CORPS,

SARATOGA, PA.
SARATOGA, PA. Nov. 25, 1890.

Lindsey Gibson. Van Buren, Ark.:

DEAR COMERADE—-Yours of the 18th was not received till yesterday. You will see by this letter- head that I am not now national president. Mrs. Mary Sears McHenry, of Denison, Iowa, is my successor. and is equally loyal and generous in her consideration of the interests of the old Union soldiers. All I can do in your case is to send on your letter and the official documents to Hrs. McHenry. Yes, there is one other thing, and that is to mention it in the New York *Weekly Tribune,* as I edit at department in that paper. With warm sympathy in behalf of every Union soldier . . . l promise to do all l can. The convention made the appropriation I requested, and if you have not received the money you will. Yours cordially.

ANNIE WHITTENMYER
Past National Pres. W. R. C.

FROM SABINVILLE, PENN.

SABINVILLE, PA., Jan. 9th, 1891.

LINDSEY GIBSON:
DEAR SIR AND COMERADE – Your appeal for aid was received yesterday, and brought before our post (H. C. Ackley Post 469) last night. we are but a small post --- 32 members --- and had only about $5.00 in Q. M.'s hands; but we voted one-half for you and chipped in after the meeting. and got enough to make five dollars, which I enclose to you. Our only regret is that we are not able to make it more. Hoping that you may be dealt fairly with, and get clear,

I remain yours in F., C and L.,
J. L. Thompson

FROM DEPARTMENT OF CONNECTICUT G. A. R.

DANBURY, CONN., December 4, 1890.
Lindsey Gibson:

Dear Comrade
This Post 18, G. A. R., has collected, and now forward to you by post office order, fifteen 15.00 dollars. Hoping you will find the hand of justice with righteousness in your coming trial, giving you freedom as on the former trial, and also to further establish the U. S. Constitution, wherein it reads: “A man shall not be twice put in jeopardy for the same offense," this post remains
yours in F., C. and L.,

ISAAC K. LEACH, Q. M.

FROM R. M. SMITH POST, N0. 269, DEPARTMENT OF IOWA, G. A. R.

ANDREW JACKSON COUNTY, Iowa.

My Dear Sir and Comrade:
Enclosed please find P. O. money order for the sum of five dollars. This amount is sent to you by comrades of R. B. Smith Post, No. 269, to assist you out of your trouble. Our post is poor, and few in number, or we would send you a larger amount. The prayer of this post is that you may get through and come out fully acquitted and a free man. My dear

old boy, as your case progresses let me hear from you. as I am anxious to know how the matter comes out. l will enclose some stamps for reply.
Yours in F., C. and L.,
]. T. BUCHANAN,
ADJUNTANT.

FROM WM. S. THOMPSON POST, NO 132, DEPARTMENT OF PENNSYLVANIA G. A. R.

OXFORD, PA., Jan. 20, 1891

LINDSEY GIBSON, VAN BUREN, ARK.:
DEAR COMERADE --- The communication from the Rice Post in your behalf was received and at regular meeting of our post was ordered to send you one dollar. The amount is small but if you receive a favorable reply from all post, it will amount to quite a sum. We are a poor post and your appeal was received on the night our rent was due, which was unfortunate, for we deeply feel for you and have our sympathy and prayers that you will be honorably acquitted.

Fraternally yours,
E. L. GILLIGAN
ADJUNTANT.

FROM HEADQUARTERS H. L. BROWN POST, NO. 255. DEPARTMENT OF PENNSYLVANIA.

WATTSBURGH, PA., Jan. 10, 1891.

Comrade Lindsey Gibson:
Your appeal for help has reached our post; it has touched our sympathy, but our post is very poor--not money enough in the treasury to pay our debts. But a few of us made you a small contribution out of our own pockets. which will send you. We take a deep interest in the matter, so much so that the post requested me to ask it as a special favor to us that, at the end of your trial. you write us a letter and let us know the result of the trial. In our State you could not be tried the second time for the same offense. With kind regards to a comrade in trouble, I will ever pray that the right
will prevail.
Yours in F., C. and L.,
SEYMOUR DEAN, Q. M.

FROM POLAND OHIO

POLAND, 0,, December 26, I890.
LINDSEY GIBSON, Esq, Van Buren, Ark.,

DEAR SIR AND COMERADE—- Enclosed I hand you post-office money order for three dollars, being a contribution from Hawkins Post, No. 416, G. A. R.

We are a very small post, of only twenty members in good standing, and none of us blessed with worldly wealth, having to earn our living by the labor of our hands. We send you this small amount as a token of our sympathy in your trouble, and will hope that you may receive sufficient aid, and that strict justice will be meted out to you, and that you may be restored to the embrace of your family soon.

Respectfully yours.
J. H. DAVIDSON.
Post Adjt.

FROM MIFFLINTOWN, PENNSYLVANIA.

MIFFLINTOWN, PA., Jan. 16, 1891.
COMRADE L. GIBSON:
DEAR SIR — At a muster of our post last night, your circular letter was read, and the post ordered that $1.00 be sent to aid you in your defense. Our funds are low and appeals frequent, or it would have given us pleasure to send a larger amount. Hope you will succeed in securing all the funds required, and, also, in freeing yourself from the charges made, or, rather, be able to prove that killing was justifiable.

Respectfully yours in F., C. and L.,
A. H. WEIDMAN,
ADJT LIENT. D. H. WILSON POST NO. 134, G. A. R.

PROM HEADQUARTERS COL. JNO. B. CLARK POST, N0. 62 G. A. R.

ALLEGHENY, PA., January 13th, 1890.
MR. LINDSEY GIBSON:
DEAR SIR ANDCOMRADE—The communication from Rice Post, No. 16, in reference to your case, was read at our regular meeting last Saturday evening. In your great trouble the comrades deeply sympathize with you, and it is the sincere desire and hope that you may receive right and justice. They have authorized me to forward you five dollars, so that

you may, by contributions of posts combined. be enabled to secure counsel, and a speedy release from all charges.
Yours in F., C. and L.,
CHAS. HOLYLAND,
ADJUTANT

FROM NEW BOSTON, ILL.

New Boston, lLL., Jan. 26th, '91.
LINDSEY GIBSON, VAN BUREN, ARK.,
DEAR SIR AND COMERADE--- In answer to your appeal we send you $3.00 to aid in your right for life and liberty. Though few in numbers, and not rich, yet the spirit which prompted us to action in '61-'65 is still with us. Wishing you long life, liberty and unalloyed happiness, I am --

Yours in F., C. and L.,
R. C. LIVINGSTON,
ADJT. NEW BOSTON POST, NO. 433.

FROM HEADQUARTERS SALLY POST, NO. 180, DEPARTMENT OF IOWA

LAKE MILLS, Iowa, Jan. 25. 1891.

DEAR COMERADE— Enclosed you will find our mite. Though it be small, our sympathy in your behalf is large, but our purses are light, and we truly hope that an overruling Providence and the courts of your State will entirely vindicate you,and spare you long years to your family. Please drop us the result of your trial on this card.

Yours in F.. C. and L.,
JAMES PRICE
COMMANDING POST.

FRANK HULL,
ADJT.

FROM HEADQUARTERS CARMAN CORPS. NO. 196, DEPARTMENT OF OHIO W. R. C.

ADA, O., Jan. 26, I89l.
MR. LINDSEY GIBSON
DEAR SIR --- Our corps president having received a letter stating your sad situation; we hasten to express our sympathy by sending you the sum of $2. We are sorry we cannot do more. I desire an answer to this, that we may know whether you received it or not. Hoping you may long be spared to enjoy the society of your family, I remain a true friend to all old soldiers.
M. E. GARRETT,
Secretary Carman W. R. C., 196.

FROM GLOVER, VT.

Glover, Vt., Jan. 23d, 1891.

COMERADE LINDSEY GIBSON:
By order of our post I send you two dollars ($2.00). Our post is poor in funds, and we have today but $2.85 as a post fund, or we should do more, But richer posts will do so much better that we trust you may have funds enough to defend yourself. We hope you may come out all safe. We should be glad to

hear as soon as the trial is over, and that you are a free man. If this goes against you, carry it up as high as the President before you give up. May God protect you.

Yours in F., C. and L.,
S. B. FRENCH,
Q. M. Mason Port, No. 16 G. A. R.

FROM DEPARTMENT OF PENNSLVANIA, G. A. R.

PECKVILLE, PA., Feb. 2. 1891.
LINDSEY GIBSON:
Dear Comrade - Enclosed is $1.00 donation from above post, which we hope will be duplicated many hundred times by the G. A. R. posts of the country. Our post is small in membership and poor in purse. Hoping and praying that you will be able to make a successful defense, I remain

Yours in F., C. and L.,
HALSEY LATHROP, Q. M.

MARTENSVILLE, ILL.

MARTENSVILLE, ILL., Jan. 11, 1891.

COMERADE LINDSEY GIBSON:
BROTHER—-Your open letter at hand, and a presentation to our post met with a responsive answer of $2.00 to aid you in your efforts to vindicate yourself. We have given according to our means, and may your letter meet with many such responses all over our country. I voice the wish of our post when I say that my prayer is that you may vindicate yourself

and stand forth a free man, and have a long and happy life before you. Would he pleased to hear from you after the trial as to its outcome.

Yours, in F., C. and L.,
T. C. MARTIN,
ADJT McMANUS Post, NO. 241, G. A. R.

FROM SOUTH AMBOY N. J.

South Amboy, N. J., Dec. 2, 1890
DEAR SIR AND COMERADE— We are a very small post. and last night seven of us were present when I read your circular. We have no funds from which to draw; but feeling it to be our bounden duty to help a comrade in distress, to the extent of our ability, we tool: up an collection for you, which I cheerfully forward to you with the best wishes of our post for your success and victory in the coming trial. Trusting you may receive a large sum from your loyal comrade: of the North, and sympathy and help from your friends at home,
I remain, ever yours,
ln F.. C. and L.,
S. H. CHATTEN,
Adjutant

FROM HEADQUARTERS WM. MCDONALD POST, NO. 435 DEPARTMENT OF IOWA, G. A. R.

KELLERTON, IOWA.,]an. 12, 1891.

DEAR COMERADE LINDSEY GIBSON. --- l received your

petition last week. Our post met last Saturday. I read your petition before the post, also made a motion to send you $3.00. Motion carried. As we didn't have any relief fund we passed the hat and got $3.00, which I will send you in a registered letter. Our post is small (twenty-seven) and poor, but our hearts are large and tender. Your have our warmest feelings in your troubles. We hope and pray that you will get through all right- Please write me after your trial is over, and let us know all about it. May God guide and direct you through all your troubles is my prayer.

Yours, in F., C. and L,
GEO. MCDONALD.

FROM GEORGE G. MEADE POST, N0. 47, DEPARTMENT OF COLORADO AND WYOMING, G. A. R.

Denver, Colo., Jan. 22, 1891.

Lindsay Gibson, Esq.:
DEAR SIR AND COMERADE --- Sometime last fall our post received your circular asking aid in defense of yourself as a murderer, etc., and in response thereto we sent ten dollars, and bid you Godspeed. Since which time we have never heard of you. We hope, however,that you received the money, and that you may get a speedy trial and come out victorious. Let me hear from you if convenient.
Yours, in F., L. and C.,
GEO. A HAMILTON
Aujt

FROM CARBONDALE, ILL.

CARBONDALE, ILL., Jan. 17, 1891.
LINDSEY GIBSON:

DEAR SIR AND CQMRADE — As per your request of Dec., 1890, I enclose you $2.85 as a contribution from G. A. R. Post No. 297, of the State of Illinois. The amount is small, but is all that we are able to do, as our post is small in number and poor in purse. But we as comrades, sincerely wish that you may be able to realize a sum suficient to employ good legal talent, and that you may again be vindicated at the hands of your countrymen.
We are yours in F., C. and L.
PATRICK LEARY,
Commander.

FROM HATCHTOWN, ILL.

BATCHTOWN, lLL., Jan. 19th, 1891.
Comrade Gibson.
I have been ordered by Calhoun Post No. 448, G. A. R., Department of Illinois, to send you one dollar, which you will find enclosed; and, as there are over seven hundred posts in this department, if they will all do as well, even in Illinois, you will have all you want. I hope and believe you will be acquitted. According to your statement of the case, there never was any crime committed. Wishing you the best of success in your trial, I remain yours, most

Respectfully, in F., C. and L.,
D. D. COCKRELL
Quartermaster.

FROM HEADQUARTERS R. Q. THOMPSON P0ST, NO. 438 G. A. R. DEPARTMENT OF KANSAS.

TRIBUNE, January 28, 1891.
LINDSEY GIBSON, Esq.:
My DEAR COMERADE --- The post desires me to say that we sympathize deeply with you, and we regret that our finances will not permit as large a donation as our hearts would prompt. However, should you stand in need of further help, don't be backward—ca!l again. We will pass the hat round among our outside friends. Although we are few in number and slender in purse, you will find R. Q. Post never fails to respond to the signal of distress. Now, with the hope you may be triumphantly acquitted, we remain in F. , C. and L.,
your friends and comrades.
R. Q. Thompson Post.
Per THOMAS H. ORR. Q. M.

FROM HEADQUARTERS CHESTER POST 280, DEPARTMENT OF PENNSYLVANIA, G. A. R.

January 19, I891.
My Dear Comrade Gibson:
Enclosed you will find post office money-order for $5.00. Our post sympathizes with you in this your hour of trouble. Have faith in that living God who manages all things well,

and all will come out right. I myself served four years and four months in the late rebellion, and I know well how to sympathize with an old comrade.

I am yours in F., C. and L.,
WM STRAW,
P. C. and Act. Adjit.

FROM MCVALLEY, IOWA.

MCVALLEY, Iowa., Jan. 12, 1891.
MR L. GIBSON, VAN BUREN Co., ARK.,
DEAR COMRADE — enclosed find P. O. order for $2.00. We, the comrades of Beldam Post, send you greeting, and trust in God for your clearing, in which we hope that justice will be done to one of our comrades.

Yours in F., C. and L.,
W. I-I. CAMPBEIL, Q. H.

FROM HEADQUARTERS WM. DALZELL POST N0. 530,

DEPARTMENT OF NEW YORK, G. A. R.
WADDINGTON, N.Y., Dec. 1st, 1890.
LINDSEY GIBSON, VAN BUREN, ARK.,
DEAR C0MERADE —- Enclosed please find P. O. order for one dollar to assist you, in a. very small way, to defend yourself in the coming trial. Our post is very small, only about twenty-five in number, and poor at that; but we want to be on record for all claims that are just. The above-named

post sends you the donation of the above-named amount hoping and trusting that you will succeed and vindicate yourself.

Yours in F.. C. and L.,
WM. C. JARDIN,
Commander.

FROM HEADQUARTERS CHENOA POST, 185, DEPARTMENT OF lLLNOIS, G. A. R

CHENOA, ILL, Jan. 19th, 1891.
Mr. Lindsey Gibson, Van Buren Co. Ark.,

COMRADE — Your circular letter was brought to the notice of our post at our last meeting, and we voted to send you five dollars out of our relief fund. You will please find post office order enclosed for the amount stated. Hoping your cause is just and that you may come out all right,
‘I am yours in F., C. and L.,
W. T. BROWN, Q. M.

FROM GARFIELD, WASH.

GARFIELD, WASH, Dec. 23, 1890.
Lindsey Gibson, Esq; ‘
DEAR COMRADE---Enclosed I hand you money order for $4.00 to assist you in your trial. Please let us hear how you come out, which we all join in hoping will be for the best.
Yours truly,
A. C. CASE,

ADJUNTANT JOHN A LOGAN POST 16.

FROM BRECKENRIDGE. COL.,

BRECKENRIDGE. COL., Dec. 15, 1890.

LINDSEY GIBSON:
DEAR SIR AND COMRADE—Herewith you will pleas: find the sum of five dollars, sent from the above post. We are a small post, away up here in the mountains, and not very well fixed financially; however, if the posts through the North respond as well in proportion to their ability, we trust that you will get ample means. Will you please be kind enough to send us paper advising us of the result of the trial. With best wishes for your success,

I am Yours in F., C. and L.,
A. W. PHILLIP

IRON HEADQUARTERS A. J. MYER POST, 239,

DEPARTMENT OF NEW YORK, G. A. R.
BUFFALO, N. Y., Dec. 8th, 1890.
Comrade Gibson:
At the last regular meeting of A. J. Myer Post, 339, on a motion, it was unanimously agreed to send you five dollars ($5) as a small contribution to help you, hoping you may be successful in your case. Now, comrade. we have members in our post who have lived in Arkansas, and they knew how to sympathize with you. If you are in need of more funds, I think

we can get some by subscription. Please answer as soon as possible.
Yours in F., C. and L.,
MONROE HASKINS
Quartermaster.

FROM CLAYTON N. J.

CLAYTON, N. J., Nov. 5, 1890.
Comrade Gibson:
Enclosed please find a post office money-order for $5, it being the gift of Samuel Mills Post, No. 76 G. A. R., Clayton, N. J., hoping that it may be the means of doing you much good in your hour of trouble.
Yours truly in F., C. and L.,
GEORGE W. DUFFIELD.
ADJUTANT

FROM HEADQUARTERS GEN. GEO. WRIGHT POST NO. 111, G. A. R., DEPARTMENT OF CALIFORNIA.

VISALIA, CA., Dec. 17, 1890.
To Comrade Lindsey Gibson:
DEAR SIR AND COMERADE – At a meeting of our post your circular letter of Nov. 8th was read, and enlisted their sympathies very much. This post is very poor in purse, but will assist you to the extent of $5, which I enclose herewith in form of post office money-order. Trusting you may find it convenient to inform this post of the result of your trial, and that it may set you at liberty,
We remain yours in F., C. and L.,

C. J. GIDDING,
Adjutant.

FROM PERRYSBURG, OHIO

PERRYSBURG, 0., Dec. 1st, 1890.
Lindsey Gibson:
COMRADE --Enclosed I send you order for $5.00 to help you in this your hour of need, this being the gift of Wolford Post, N0. 51 G. A. R., Department of Ohio.
Accept the same from those who are in sympathy with you, and hope you may come out of your troubles with flying colors.

Yours in F., C. and L..
W. H. HOLLEBECK,
Post Commander.

Proof